

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO
3 BEFORE THE HONORABLE JOHN E. MUNTER, JUDGE
4 DEPARTMENT NO. 505
5

6 LESLIE J. WHITELEY AND)
7 LEONARD WHITELEY,)
8 PLAINTIFFS,)
9 VS.) NO. 303184
10 RAYBESTOS-MANHATTAN, INC., ET)
11 AL.,)
12 DEFENDANTS.)
13 _____)
14

15 REPORTER'S TRANSCRIPT OF PROCEEDINGS
16 MONDAY, FEBRUARY 28, 2000
17 (VOLUME 32, PAGES 4494-4630)
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23 REPORTED BY: JUDITH ANN OSSA, CSR 2310
24 OFFICIAL REPORTER
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3

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4497
1 MONDAY, FEBRUARY 28, 2000 9:50 A.M.
2 (THE FOLLOWING PROCEEDINGS WERE HELD IN THE
3 COURTROOM, IN THE PRESENCE OF THE JURY)

4 THE COURT: GOOD MORNING, JURORS. I APOLOGIZE
5 FOR THE DELAY. I WAS DOING SOME WORK WITH THE LAWYERS.
6 OKAY.
7 MS. CHABER.
8 MS. CHABER: YES, YOUR HONOR. BEFORE WE GET
9 STARTED WITH DR. MARTIN, I WOULD ASK THE COURT TO READ A
10 STATEMENT TO THE JURY REGARDING THE PLAINTIFF.
11 THE COURT: OKAY. IS THERE ANY OBJECTION TO
MY
12 DOING THAT AT THIS TIME, TO READ THAT STATEMENT AT THIS
13 TIME?
14 MR. FURR: NO, YOUR HONOR.
15 MR. HARDY: NO, YOUR HONOR.
16 MR. ESCHER: NO, YOUR HONOR.
17 THE COURT: JURORS, HERE IS THE BRIEF
18 STATEMENT:
19 "PLAINTIFF LESLIE WHITELEY WILL BE UNABLE TO
20 RETURN TO THE COURTROOM DUE TO HER HEALTH

21 CONDITION. YOU MUST NOT HOLD THAT FACT AGAINST
22 ANY PARTY IN DECIDING THIS CASE."
23 THAT'S THE BRIEF STATEMENT.
24 OKAY. MS. CHABER, YOU MAY PROCEED. DR. MARTIN
25 IS BACK ON THE WITNESS STAND.
26 FURTHER TESTIMONY OF

27 CLAUDE MARTIN, PH.D.,
28 A WITNESS CALLED ON BEHALF OF THE DEFENSE, HAVING BEEN
4498
1 PREVIOUSLY DULY SWORN, TESTIFIED FURTHER AS FOLLOWS:
2
3 CROSS-EXAMINATION (RESUMED)
4 BY MS. CHABER: Q. GOOD MORNING, DR. MARTIN.
5 A. GOOD MORNING.
6 Q. IF YOU CAN'T HEAR ME, PLEASE LET ME KNOW. I'M
IN
7 THE PROCESS OF BEING ABOUT TO LOSE MY VOICE.
8 A. SORRY.
9 Q. MAYBE NOT.
10 DR. MARTIN, WOULD YOU AGREE THAT IT IS POSSIBLE
11 THAT ADVERTISING COULD INFLUENCE BRAND CHOICE AMONG
TEENAGE
12 SMOKERS?
13 A. YES, I THINK THAT'S POSSIBLE.
14 Q. AND WOULD YOU AGREE THAT A BRAND COULD FULFILL
A
15 NEED THAT A TEENAGER MIGHT HAVE WITH RESPECT TO THEIR
IMAGE?
16 A. I HAVE SOME DOUBTS A LITTLE BIT ABOUT THAT,
17 BECAUSE OF THE INFORMATION AND DATA THAT I HAVE SEEN FROM
18 THE UNIVERSITY OF MICHIGAN STUDY ON THAT SUBJECT.

19 Q. DO YOU RECALL BEING DEPOSED IN MISSISSIPPI?
20 A. I RECALL BEING DEPOSED IN THE CASE OF THE
21 ATTORNEY GENERAL OF MISSISSIPPI, YES.
22 Q. YOU MIGHT HAVE BEEN BACK IN MICHIGAN, BUT IT
WAS
23 FOR A CASE THAT WAS PENDING BY THE ATTORNEY GENERAL OF THE
24 STATE OF MISSISSIPPI; CORRECT?
25 A. YES, THAT'S CORRECT.
26 Q. AND DO YOU RECALL MAKING THE FOLLOWING
27 STATEMENT --
28 MR. ESCHER: EXCUSE ME, YOUR HONOR. COULD WE

4499

1 GET A COPY OF THAT?
2 THE COURT: IF THERE IS AN OBJECTION TO THE
3 FORM, I WOULD SUSTAIN.
4 MS. CHABER: I THINK I'M SHORT ONE, YOUR
HONOR.
5 THE COURT: IF YOU WANT TO READ SOMETHING, WHY
6 DON'T YOU TELL US THE LINES AND THE PAGES. IF THERE'S NO
7 OBJECTION, I DON'T NEED A COPY.
8 MS. CHABER: OKAY. PAGE 127, LINES 13 TO 18.

9 MR. ESCHER: I DON'T HAVE ANY OBJECTION, YOUR
10 HONOR.

11 THE COURT: YOU MAY READ.
12 MS. CHABER: "QUESTION: WOULD THE BRAND OF A
13 CIGARETTE THEY CHOOSE FULFILL SOME NEED THAT
THEY
14 HAVE?
15 "ANSWER: YES. IT'S QUITE POSSIBLE THAT A
BRAND
16 OF A CIGARETTE COULD FULFILL A NEED THAT
SOMEBODY
17 HAD, YES."
18 Q. IS THAT YOUR ANSWER TO THE QUESTION ASKED OF
YOU
19 IN MISSISSIPPI?
20 A. YES, IT IS.
21 Q. ARE YOU AWARE, SIR, THAT MARLBORO, CAMEL AND
22 NEWPORT ARE THE MOST HEAVILY ADVERTISED BRANDS OF
23 CIGARETTES?
24 A. I BELIEVE THEY ARE.
25 Q. AND ARE YOU AWARE, SIR, THAT THOSE ARE THE MOST
26 FREQUENTLY USED CIGARETTES BY TEENAGERS?
27 MR. ESCHER: OBJECTION, YOUR HONOR. VAGUE AS
TO
28 TIME.

4500

1 THE COURT: YES. AT WHAT POINT?

2 MS. CHABER: FROM THE 1970S TO THE PRESENT.
3 THE WITNESS: I BELIEVE THAT THERE IS DATA
THAT
4 I HAVE SEEN THAT WOULD INDICATE THAT, YES.
5 MS. CHABER: Q. WOULD YOU AGREE, SIR, THAT
6 ADOLESCENCE IS A TIME OF IDENTITY FORMATION?
7 A. I'M NOT AN EXPERT IN IDENTITY FORMATION BY
8 ADOLESCENTS. I'M SORRY. I THINK THAT'S MORE OF A CHILD
9 PSYCHOLOGY DISCIPLINE.
10 Q. WELL, SIR, IN ORDER TO DETERMINE WHETHER OR NOT
11 ADVERTISING AND PROMOTIONAL THINGS APPEAL TO CHILDREN,
12 WOULDN'T YOU NEED TO KNOW WHAT IDENTITY ISSUES CHILDREN
13 WOULD HAVE IN ADOLESCENCE?
14 MR. ESCHER: OBJECTION, YOUR HONOR. VAGUE.
15 ALSO, BEYOND THE SCOPE OF THE DIRECT EXAMINATION.
16 THE COURT: OVERRULED.
17 THE WITNESS: I THINK I BETTER HAVE IT READ
BACK
18 BECAUSE OF --
19 THE COURT: THAT'S FINE.
20 THE WITNESS: -- WHAT'S GONE ON.
21 THE COURT: IF YOU NEED TO HAVE IT READ BACK,
22 DON'T HESITATE. WE'D RATHER HAVE THE QUESTION READ BACK
23 RATHER THAN HAVE YOU HAVE QUESTIONS ABOUT IT. THERE IS
24 NOTHING WRONG WITH YOU HAVING IT READ BACK.
25 THE WITNESS: THANK YOU, YOUR HONOR.

27 THE WITNESS: I SUPPOSE, IF YOU WERE GOING TO
28 FRAME AN ADVERTISING CAMPAIGN THAT WAS DIRECTED AT
CHILDREN,

4501

1 YOU MIGHT WANT TO KNOW SOMETHING ABOUT CHILDREN AND WHAT
2 WOULD APPEAL TO THEM.

3 MS. CHABER: Q. AND I SUPPOSE, IF YOU WERE
4 GOING TO DIRECT AN ADVERTISING CAMPAIGN TO CHILDREN, YOU
5 WOULD LOOK AT THE KINDS OF THEMES THAT APPEAL TO CHILDREN,
6 WOULD YOU NOT?

7 A. I SUPPOSE IF YOU WERE GOING TO WRITE
ADVERTISING
8 FOR CHILDREN, YES, I GUESS YOU WOULD LOOK AT THE THEMES
THAT
9 MIGHT APPEAL TO THEM.

10 Q. AND ONE OF THE THEMES THAT MIGHT APPEAL TO
11 CHILDREN IS A THEME OF INDEPENDENCE?

12 MR. ESCHER: OBJECTION. LACK OF FOUNDATION.
13 VAGUE, YOUR HONOR.

14 THE COURT: WELL, WHEN YOU SAY "LACK OF
15 FOUNDATION," IF HE DOESN'T KNOW, HE CAN TELL US. AND IF
HE

16 DOES, HE WILL TELL US.
17 I WILL OVERRULE.
18 THE WITNESS: THAT'S WHY I HAD MY RESPONSE
19 EARLIER ABOUT THE UNIVERSITY OF MICHIGAN STUDY, BECAUSE
THEY
20 SPECIFICALLY LOOKED AT INDEPENDENCE AND WHETHER OR NOT
21 INDEPENDENCE HAD A RELATIONSHIP TO IDENTIFICATION OF
22 CIGARETTE SMOKERS.
23 AND AS IT TURNS OUT, INDEPENDENCE IS NOT A
MAJOR
24 IMAGE THAT IS ASSOCIATED BY HIGH SCHOOL SENIORS WITH
25 CIGARETTE SMOKING OR SMOKERS.
26 MS. CHABER: Q. I DON'T THINK YOU QUITE
27 ANSWERED MY QUESTION, SIR.
28 A. I APOLOGIZE.

4502

1 Q. ARE THERE CERTAIN THEMES THAT APPEAL TO
CHILDREN,
2 SUCH AS THE THEME OF INDEPENDENCE?
3 A. IF YOU SAY SO.
4 BUT MY PROBLEM WITH THAT IS THAT THERE IS SOME
5 INDICATION FROM THE DATA FROM THE UNIVERSITY OF MICHIGAN
6 WHICH WOULD INDICATE THAT THAT IS NOT A MAJOR FACTOR FOR
7 CHILDREN, AT LEAST AS IT RELATES TO CIGARETTE SMOKING.
8 Q. SIR, WOULD YOU AGREE THAT ADVENTURE-SEEKING IS

A

9 THEME THAT APPEALS TO CHILDREN?

10 A. AGAIN, THE SAME PROBLEM I HAVE IS, BECAUSE OF
THE

11 UNIVERSITY OF MICHIGAN STUDY, AGAIN -- I MEAN, I'M TRYING
TO

12 BE RESPONSIVE TO YOU, BUT MY DIFFICULTY WITH IT IS THAT
WHEN

13 YOU SAY "ADVENTURE-SEEKING APPEALS TO CHILDREN," YOU
REALLY

14 ARE GETTING INTO THE CHILD PSYCHOLOGY AREA, AND THAT'S NOT

15 MY EXPERTISE.

16 Q. WELL, SIR, WOULD YOU BE INTERESTED TO HAVE
KNOWN

17 WHETHER OR NOT R.J. REYNOLDS OR PHILIP MORRIS LOOKED AT
WHAT

18 THEMES APPEALED TO CHILDREN IN DEVELOPING THEIR MARKETING?

19 A. I'D LOOK AT IT -- I MEAN, WOULD IT BE OF
INTEREST

20 TO ME? IT WOULD NOT BE. IT IS NOT WHAT I WAS STUDYING IN
21 PREPARATION FOR THIS CASE.

22 Q. SIR, I TAKE IT THEN THAT IF THERE WERE

MEMORANDA

23 AND OTHER DOCUMENTS WITHIN R.J. REYNOLDS AND PHILIP MORRIS

24 THAT ANALYZED WHAT THEMES APPEALED TO CHILDREN, YOU WOULD
25 NOT CONSIDER THAT IN FORMING YOUR OPINION IN THIS CASE;
26 CORRECT?

27 A. I WOULD NOT CONSIDER IT IN FORMING MY OPINION
IN
28 THIS CASE FOR A NUMBER OF DIFFERENT REASONS, YES.

4503

1 Q. AND, SIR, YOU'D AGREE, WOULD YOU NOT, THAT TO
2 SOME EXTENT, YOUNG SMOKERS WEAR THEIR CIGARETTES; IN OTHER
3 WORDS, WEAR THE IDENTITY OF THE CIGARETTE?

4 A. I'VE NEVER SEEN ANY RESEARCH ON THAT.

5 Q. YOU KNOW -- OKAY. YOU HAVEN'T SEEN RESEARCH ON
6 THAT.

7 YOU DO KNOW THAT CHILDREN, TEENAGERS IN
8 PARTICULAR, WEAR CERTAIN CLOTHING FOR THEIR IDENTITY?

9 A. WELL, I KNOW -- I KNOW THAT CERTAIN TEENAGERS
DO
10 WEAR CLOTHING THAT MAY HAVE SOME MARK OR SOMETHING ON IT,
11 BECAUSE I SEE IT ON NOW MY OWN CHILDREN AND GRANDCHILDREN.
12 THEY KEEP GIVING ME THINGS, IN FACT, THAT HAVE IT AT ON
THEM
13 TOO.

14 Q. SIR, YOU UNDERSTAND THAT CERTAIN STYLES OF
DRESS,
15 ONE KID IMITATES ANOTHER KID IN STYLE OF DRESS?

16 MR. ESCHER: OBJECTION, YOUR HONOR. VAGUE AS
TO
17 THE TERM "KID."
18 IT'S VAGUE, YOUR HONOR. THAT'S MY OBJECTION.
19 THE COURT: TELL US IS WHAT YOU MEAN BY "KID."
20 MS. CHABER: SOMEONE UNDER THE AGE OF 18.
21 THE WITNESS: WEARS CLOTHING IN IMITATION OF
22 ANOTHER PERSON WHO IS THE UNDER THE AGE OF 18?
23 MS. CHABER: Q. THAT'S CORRECT.
24 A. FROM MY OWN OBSERVATION, I HAVEN'T REALLY
STUDIED
25 THAT.
26 BUT I MEAN, FROM MY OWN OBSERVATION, I SEE KIDS
27 WHO ARE DRESSED SIMILARLY, SURE. AND I SEE MY KIDS --
WELL,
28 MY KIDS ARE KIND OF OLD NOW, BUT AT LEAST I HAVE ONE

4504
1 GRANDCHILD WHO IS PROBABLY IN THAT CATEGORY YOU'RE
THINKING
2 OF. I SEE HIM WEARING CLOTHING THAT IS KIND OF IMITATIVE
OF

3 WHAT OTHER KIDS WEAR.
4 Q. AND STYLE OF HAIR; THAT'S IMITATIVE OF WHAT

OTHER

5 KIDS WEAR?

6 A. WELL, GEE, I'M NOT AN EXPERT ON HAIR STYLES OF
7 KIDS, BUT I DON'T KNOW. FROM MY OWN EXPERIENCE, I HAVE A
8 GRANDSON WHO'S GOT A BUZZ CUT. I'M NOT -- ONE OF THE

OTHER

9 KIDS SEEMS TO HAVE LONG HAIR.

10 I'M NOT SURE ABOUT THAT, I SUPPOSE.

11 Q. SIR, HAVE YOU EVER LOOKED AT -- STRIKE THAT.

12 WOULD YOU AGREE, SIR, THAT SMOKING A CIGARETTE
13 FOR THE BEGINNER IS A SYMBOLIC ACT?

14 A. A SYMBOLIC ACT? I DON'T KNOW WHAT YOU MEAN BY
15 "SYMBOLIC ACT." I'M SORRY.

16 Q. AN ACT THAT SAYS, "I'M NO LONGER MY MOTHER'S
17 CHILD. I'M TOUGH, I'M AN ADVENTURER. I'M NOT A SQUARE."

18 A. THE DATA I'VE SEEN DOESN'T USE THOSE WORDS,

THAT

19 TERMINOLOGY THAT YOU'VE JUST USED.

20 BUT THE DATA THAT I HAVE SEEN INDICATES THAT

THE

21 TERMINOLOGY IS REBELLIOUSNESS THAT IS ASSOCIATED WITH THE
22 CIGARETTE SMOKING INITIATION.

23 Q. AND, SIR, HAVE YOU EVER LOOKED AT PHILIP MORRIS
24 DOCUMENTS TO SEE WHETHER OR NOT THEY USED THAT TERMINOLOGY
25 IN DETERMINING WHY ONE SMOKES CIGARETTES?

26 A. NO, I HAVEN'T LOOKED AT ANY DOCUMENTS FROM

PHILIP

27 MORRIS.

28 Q. YOU WERE NEVER SHOWN A 1969 MEMORANDUM ENTITLED

4505

1 "WHY ONE SMOKES" THAT USES THAT LANGUAGE, THAT SMOKING IS

A

2 SYMBOLIC ACT?

3 A. THIS IS A PHILIP MORRIS DOCUMENT?

4 Q. YES.

5 A. NO.

6 Q. WELL, SIR, HAVE YOU EVER LOOKED AT A 1975

7 MEMORANDUM OF R.J. REYNOLDS THAT LOOKS AT TEENAGERS AND
WHAT

8 APPEALS TO TEENAGERS?

9 A. NO, I HAVE NOT.

10 Q. SIR, YOU ARE AWARE, ARE YOU NOT, THAT -- I'M

11 LOSING MY VOICE HERE -- THAT THERE ARE MARKETING

MEMORANDA,

12 INTERNAL MEMORANDA FROM THE TOBACCO COMPANIES THAT INVOLVE

13 MARKETING TO CHILDREN? YOU ARE AWARE OF THAT; CORRECT?

14 MR. ESCHER: OBJECTION, YOUR HONOR. VAGUE AS

TO

15 THE TERM "MARKETING TO CHILDREN."

16 THE COURT: SUSTAINED.

17 MS. CHABER: Q. SIR, YOU ARE AWARE OF

MEMORANDA

18 THAT ANALYZE THE NEEDS OF CHILDREN AND THE DIRECTION OF
19 ADVERTISING TOWARDS THOSE NEEDS THAT ARE INTERNAL TO THE
20 TOBACCO COMPANIES, ARE YOU NOT?

21 A. NO, MA'AM, I'M NOT AWARE OF MEMORANDA.
22 I AM AWARE, HAVING READ IN THE PRESS THAT THERE
23 ARE -- IN ONE CASE, IT WAS THOUSANDS. AND IN ANOTHER CASE
I
24 READ -- I GUESS IT WAS IN CONJUNCTION WITH THE MINNESOTA
25 ATTORNEY GENERAL CASE -- THAT THERE IS OVER A MILLION
26 DOCUMENTS THAT HAVE COME FROM VARIOUS CIGARETTE COMPANIES
27 THAT HAVE BECOME PUBLIC, SO TO SPEAK.
28 BUT THAT'S -- I'M NOT AWARE OF THE SPECIFIC

4506

1 MEMORANDA THAT YOU'RE TALKING ABOUT.
2 Q. SIR, IS IT FAIR TO SAY THAT YOU HAVE NOT LOOKED
3 AT ONE SINGLE INTERNAL TOBACCO INDUSTRY DOCUMENT IN
RELATION
4 TO WHETHER OR NOT THEY ANALYZE CHILDREN AND THE NEEDS OF
5 CHILDREN IN MARKETING THEIR PRODUCTS OTHER THAN WHAT MAY
6 HAVE BEEN SHOWN TO YOU IN A COURTROOM BY AN ATTORNEY SUCH
AS
7 MYSELF?

8 A. IT IS CORRECT THAT I HAVE NOT SEEN ANY INTERNAL
9 DOCUMENTS FROM THE CIGARETTE COMPANIES OTHER THAN
DOCUMENTS
10 THAT APPEARED -- EITHER WERE SHOWN TO ME IN A DEPOSITION
OR
11 COURTROOM OR WERE ATTACHED TO AN EXPERT'S REPORT.
12 Q. AND, SIR, IS IT FAIR TO SAY THAT YOU HAVE SPENT
13 NO TIME LOOKING THROUGH THE INTERNAL FILES OF THE PEOPLE
YOU
14 ARE HERE TESTIFYING ON BEHALF OF TO SEE WHETHER OR NOT
THEY
15 HAVE DOCUMENTS THAT ADDRESS THE ISSUE OF YOUTH AND
MARKETING
16 TO YOUTH?
17 A. I DID NOT LOOK AT ANY INTERNAL COMPANY
DOCUMENTS
18 FOR THREE SIGNIFICANT REASONS.
19 Q. YOU HAVE NOT LOOKED AT ANY COMPANY DOCUMENTS,
20 ALTHOUGH YOU HAVE BEEN TESTIFYING ON BEHALF OF CIGARETTE
21 COMPANIES SINCE THE LATE 1980S; IS THAT CORRECT?
22 A. WELL, FIRST OF ALL, I'VE ONLY TESTIFIED A FEW
23 TIMES. I'M NOT SURE THAT I TESTIFIED ON BEHALF OF THE
24 CIGARETTE COMPANIES. THAT MAY BE LEGALLY CORRECT.
25 BUT I'VE BEEN RETAINED BY LAW FIRMS TO ADDRESS
26 THE ISSUE OF SMOKING INITIATION AND SMOKING BEHAVIOR AND
27 REPORT ON WHAT MY CONCLUSIONS ARE CONCERNING THOSE.

28 Q. AND IT'S FAIR TO SAY, SIR, THAT YOU HAVE NOT

4507

1 ANALYZED ANYTHING INSIDE PHILIP MORRIS OR R.J. REYNOLDS OR
2 LORILLARD OR BROWN & WILLIAMSON OR ANY OTHER TOBACCO
3 COMPANY'S FILES TO SEE WHAT THEY ACTUALLY HAVE SAID ABOUT
4 THE ISSUE OF SMOKING INITIATION BY CHILDREN AND WHETHER OR
5 NOT THEIR TESTING HAS SOME EFFECT? IS THAT FAIR TO SAY,
6 SIR?

7 A. IT IS FAIR TO SAY THAT I HAVE NOT EXAMINED ANY
8 INTERNAL COMPANY DOCUMENTS OF THE CIGARETTE INDUSTRY OTHER

9 THAN THE ONES THAT I MENTIONED THAT HAVE COME TO LIGHT AND
10 BEEN PRESENTED TO ME BY ATTORNEYS. AND THAT IS FOR THREE
11 VERY SOLIDLY GOOD REASONS.

12 MS. CHABER: I'D MOVE TO STRIKE, YOUR HONOR,
13 EVERYTHING AFTER --

14 THE COURT: I CAN STRIKE IT, BUT HE SAID IT
15 SEVERAL OTHER TIMES WHEN YOU DIDN'T ASK ME TO STRIKE IT.

SO

16 IT REALLY IS BESIDE THE POINT.

17 BUT IF YOU WANT ME TO STRIKE THE REFERENCE TO
18 "THREE SOLID GOOD REASONS," I WILL, BUT IT'S ALREADY IN

THE

19 RECORD ANYWAY.

20 MS. CHABER: THAT'S OKAY. I'D MOVE TO HAVE IT
21 STRICKEN AT THIS POINT IN TIME.
22 THE COURT: I'LL STRIKE IT THIS TIME.
23 MS. CHABER: Q. WOULD YOU AGREE, SIR, THAT
24 THERE ARE BOTH PSYCHOSOCIAL REASONS FOR SMOKING AND
25 PHARMACOLOGICAL REASONS FOR SMOKING?
26 A. YOU HAVE GONE WAY BEYOND MY EXPERTISE, AND
27 THAT'S -- I DON'T EVEN KNOW WHAT SOME CASE -- I'M NOT
QUITE
28 SURE WHAT THE DISCIPLINE IS YOU'RE TALKING ABOUT.

4508

1 THAT IS WAY BEYOND MY EXPERTISE. I'M SORRY.
2 Q. SIR, YOU KNOW THAT THERE ARE SOME PRODUCTS OUT
3 THERE THAT PEOPLE USE BECAUSE THEY HAVE A NEED FOR THEM,
4 LIKE THEY NEED TO WASH THEIR CLOTHES, AND OTHER PRODUCTS
5 THAT PEOPLE MAY USE BECAUSE THEY HAVE A NEED FOR THEM
6 BECAUSE OF A PHYSIOLOGICAL NEED?
7 A. AGAIN, ADDRESSING A PHYSIOLOGICAL NEED IS
8 REALLY -- YOU'VE REALLY GONE WAY BEYOND MY EXPERTISE. I'M
A
9 MARKETING GUY. THAT'S JUST BEYOND MY EXPERTISE. IT
SOUNDS
10 LIKE IT'S THE MEDICAL PROFESSION TO ME.
11 Q. SIR, HAVE YOU LOOKED AT ANY OF THE MARKETING
12 DOCUMENTS OF R.J. REYNOLDS OR PHILIP MORRIS OR ANY OTHER

13 TOBACCO COMPANY TO SEE WHETHER THEY LOOK AT ISSUES SUCH AS
14 PHARMACOLOGICAL OR PHYSIOLOGICAL NEED IN TERMS OF
MARKETING

15 THEIR PRODUCTS?

16 A. WE ARE GOING BACK OVER THE SAME TERRITORY
AGAIN.

17 AS I MENTIONED EARLIER -- I MEAN, GOSH, I HAVEN'T LOOKED
AT

18 ANY OF THE INTERNAL DOCUMENTS OF ANY OF THE TOBACCO
19 COMPANIES, OTHER THAN THOSE THAT HAVE BEEN PRESENTED TO ME
20 AT DEPOSITION OR TRIAL, OR THOSE THAT ARE PART OF, YOU
KNOW,

21 AN ATTACHMENT TO SOME EXPERT'S REPORT.

22 Q. AND, SIR, I GUESS THAT WOULD REMAIN TRUE ALSO
FOR

23 DETERMINING WHETHER OR NOT THE TOBACCO COMPANIES -- THE
24 CIGARETTE MANUFACTURERS HAVE ATTEMPTED TO ENLARGE THEIR
25 SHARE OF THE UNDER-18 MARKET THROUGH ANY MEANS?

26 A. THAT WOULD ALSO BE TRUE.

27 Q. YOU HAVE NOT LOOKED AT ANY DOCUMENTS ON THAT
28 ISSUE.

4509

1 WOULD THAT ALSO BE TRUE AS TO DOCUMENTS

RELATING

2 TO AN ATTEMPT TO ENLARGE A MINOR OR YOUTH MARKET SHARE OF
A

3 PARTICULAR BRAND?

4 MR. ESCHER: OBJECTION, YOUR HONOR. VAGUE.

5 AND ALSO, I BELIEVE IT'S CUMULATIVE,

6 ARGUMENTATIVE.

7 THE COURT: IT IS REPETITIVE. I'M GOING TO

8 SUSTAIN AND ASK MS. CHABER TO MOVE ON TO SOMETHING ELSE,

9 PLEASE.

10 MS. CHABER: Q. DO YOU STILL HAVE THE 1994

11 SURGEON GENERAL'S REPORT UP THERE?

12 A. NO, I DO NOT.

13 Q. I'LL GET YOU A COPY.

14 SIR, LET ME READ YOU A CONCLUSION FROM THE 1994

15 SURGEON GENERAL'S REPORT ON PREVENTING TOBACCO USE AMONG

16 YOUNG PEOPLE, AND ASK YOU WHETHER OR NOT YOU AGREE WITH

THAT

17 STATEMENT.

18 MR. ESCHER: OBJECTION, YOUR HONOR. OBJECT TO

19 THE FORM OF THE QUESTION.

20 THE COURT: THE REPORT IS NOT IN EVIDENCE, I

21 GUESS.

22 IS THAT THE BASIS OF THE OBJECTION?

23 MR. ESCHER: SHE IS NOT IMPEACHING ANY

TESTIMONY

24 AT THIS POINT, YOUR HONOR.
25 THE COURT: YES, I AGREE. I'LL SUSTAIN.
26 IF YOU WANT TO ASK HIM THE QUESTION, YOU CAN
ASK
27 HIM THE QUESTION WITHOUT REFERENCE TO THE DOCUMENT.
28 MS. CHABER: Q. SIR, IT'S TRUE, IS IT NOT,

4510
1 THAT "CIGARETTE ADVERTISING APPEARS TO AFFECT YOUNG
PEOPLE'S
2 PERCEPTION OF THE PERVASIVENESS, IMAGE AND THE FUNCTION OF
3 SMOKING," IS IT NOT?
4 A. NO, THAT IS NOT ABSOLUTELY TRUE.
5 Q. AND, SIR, IT'S TRUE THAT "SINCE MISPERCEPTIONS
IN
6 THESE AREAS CONSTITUTE PSYCHOSOCIAL RISK FACTORS FOR THE
7 INITIATION OF SMOKING, CIGARETTE ADVERTISING APPEARS TO
8 INCREASE YOUNG PEOPLE'S RISK OF SMOKING"; TRUE OR NOT
TRUE?
9 A. I DO NOT AGREE WITH THAT.
10 Q. AND, SIR, THOSE ARE TWO CONCLUSIONS THAT THE
11 SURGEON GENERAL REACHED IN 1994, DID THEY NOT, IN THEIR
12 300-PAGE REPORT ON PREVENTING YOUTH TOBACCO USE AMONG
YOUNG
13 PEOPLE?
14 A. COULD YOU DIRECT ME TO WHERE YOU'RE READING,

WHAT

15 YOU ARE TALKING ABOUT, SO THAT I CAN READ IT AND THEN
16 RESPOND AT LEAST TO WHAT YOUR QUESTION IS.
17 Q. THE PAGE I OPENED TO, SIR, PAGE 195, CONCLUSION
18 5.
19 A. CONCLUSION 5?
20 Q. CONCLUSION 5, SIR.
21 THE COURT: THIS IS PLAINTIFFS' 1944 FOR
22 IDENTIFICATION, FOR THE RECORD?
23 MS. CHABER: YES.
24 AND I WOULD MOVE THIS INTO EVIDENCE, YOUR
HONOR.
25 IT'S BEEN PREVIOUSLY ESTABLISHED BOTH THROUGH
26 SEVERAL OTHER WITNESSES --
27 THE COURT: YOU DON'T NEED TO ARGUE.
28 LET'S JUST SEE IF THERE'S AN OBJECTION.

4511
1 MR. ESCHER: WE OBJECT, YOUR HONOR. HEARSAY.
2 THE COURT: SUSTAINED.
3 MS. CHABER: Q. DID I READ THAT CORRECTLY,
4 SIR, THAT "CIGARETTE ADVERTISING APPEARS TO AFFECT YOUNG
5 PEOPLE'S PERCEPTIONS OF THE PERVASIVENESS, IMAGE AND
6 FUNCTION OF SMOKING" AS A CONCLUSION OF THE SURGEON

7 GENERAL'S REPORT?
8 A. THAT'S PART OF THE CONCLUSION.
9 Q. DID I READ THAT SENTENCE CORRECTLY?
10 A. YOU READ THAT CORRECTLY. YOU READ THE FIRST
11 SENTENCE CORRECTLY.
12 Q. THE SECOND SENTENCE: "SINCE MISPERCEPTIONS IN
13 THESE AREAS CONSTITUTE PSYCHOSOCIAL RISK FACTORS FOR THE
14 INITIATION OF SMOKING, CIGARETTE ADVERTISING APPEARS TO
15 INCREASE YOUNG PEOPLE'S RISK OF SMOKING."
16 DID I READ THAT CORRECTLY, SIR?
17 A. YES, YOU DID. YOU READ IT CORRECTLY.
18 Q. DID THE SURGEON GENERAL ALSO CONCLUDE THAT
19 CIGARETTE ADVERTISING USES IMAGES RATHER THAN INFORMATION
20 TO
21 PORTRAY THE ATTRACTIVENESS AND FUNCTION OF SMOKING?
22 MR. ESCHER: OBJECTION, YOUR HONOR. HEARSAY.
23 THE COURT: SUSTAINED.
24 MS. CHABER: Q. DOCTOR, YOU DON'T BELIEVE
25 THAT
26 CIGARETTE SMOKING -- STRIKE THAT.
27 YOU DON'T BELIEVE THAT CIGARETTE ADVERTISING
28 PROMOTES INITIATION OF SMOKING AMONGST YOUTH, DO YOU?
29 A. NO, I DO NOT.
30 Q. AND YOU DO NOT BELIEVE THAT CIGARETTE
31 ADVERTISING

4512

1 INCREASES YOUNG PEOPLE'S RISK OF SMOKING?

2 A. INCREASES YOUNG PEOPLE'S RISK OF SMOKING?

3 Q. THE RISK THAT THEY WILL START SMOKING.

4 A. I DON'T BELIEVE SO, NO.

5 Q. AND, SIR, YOU DON'T BELIEVE THAT CIGARETTE
6 ADVERTISING IMAGES PORTRAY ATTRACTIVENESS IN THE FUNCTION
OF
7 SMOKING AND CORRELATE WITH PSYCHOSOCIAL FACTORS THAT
APPEAL

8 TO YOUNG PEOPLE, DO YOU?

9 MR. ESCHER: OBJECTION. VAGUE, YOUR HONOR.

10 THE COURT: DO YOU UNDERSTAND THE QUESTION?

11 THE WITNESS: NO, YOUR HONOR, I REALLY DO NOT.

12 THE COURT: SUSTAINED.

13 MS. CHABER: Q. SIR, DO YOU RECALL EARLIER
14 THIS MORNING YOU TESTIFIED THAT YOU DIDN'T BELIEVE THAT
15 CIGARETTE ADVERTISING CONVEYING INDEPENDENCE,
16 ADVENTURE-SEEKING, YOUTHFUL ACTIVITIES THEMES, CORRELATED
17 WITH PSYCHOSOCIAL FACTORS THAT APPEAL TO YOUNG PEOPLE;
18 CORRECT?

19 A. NO, I DIDN'T TESTIFY TO THAT. I DON'T RECALL
20 EVER EVEN USING THE WORD "PSYCHOSOCIAL." I JUST DON'T
21 RECALL USING THOSE WORDS, NO.

22 Q. SIR, THERE ARE CERTAIN THEMES THAT I ASKED YOU
23 ABOUT, SUCH AS INDEPENDENCE AND ADVENTURE-SEEKING, AND
24 ASKED YOU WHETHER OR NOT CIGARETTE ADVERTISING APPEALED TO
25 YOUTH'S CONNECTION WITH THOSE TYPES OF THEMES.
26 DO YOU RECALL THAT QUESTION?
27 A. I DON'T RECALL YOUR QUESTION.
28 I DO RECALL WHAT I SAID, BUT I DON'T RECALL
YOUR

4513

1 QUESTION SPECIFICALLY WHETHER -- I WOULDN'T WANT TO SAY,
2 "GEE, THAT'S WHAT YOU SAID." NO.
3 Q. YOUR ANSWER WAS, SIR, THAT YOU DIDN'T THINK
THAT
4 THERE WAS SUFFICIENT DATA TO SAY THAT YOUTH WERE ATTRACTED
5 TO ADVERTISING CONVEYING INDEPENDENCE OR
ADVENTURE-SEEKING?
6 MR. ESCHER: OBJECTION, YOUR HONOR. THE FORM
OF
7 THE QUESTION.
8 THE COURT: SUSTAINED.
9 MS. CHABER: Q. SIR, DO YOU AGREE THAT
10 ADVERTISING CONVEYS INDEPENDENCE, HEALTHFULNESS,
11 ADVENTURE-SEEKING AND YOUTHFUL ACTIVITY THEMES THAT APPEAL

12 TO YOUNG PEOPLE?
13 A. I HAVE, AS I MENTIONED EARLIER THIS MORNING,
14 SOME
15 REAL CONCERN ABOUT THAT, SIMPLY BECAUSE THERE IS DATA THAT
16 COMES FROM THE UNIVERSITY OF MICHIGAN'S "MONITORING THE
17 FUTURE" STUDY THAT WOULD INDICATE THAT THOSE -- AND ONE
18 CAN
19 REACH A CONCLUSION, AND I HAVE, THAT THOSE ARE NOT MAJOR
20 FACTORS THAT PEOPLE ASSOCIATE WITH SMOKING BEHAVIOR, THAT
21 SMOKERS ARE NOT INDEPENDENT, ADVENTURE-SEEKING AND SO
22 FORTH.
23 AND THERE IS CLEARLY A LARGE NATIONAL STUDY
24 THAT

25 WOULD ARGUE AGAINST THE POINT THAT YOU'RE MAKING.
26 Q. SIR, YOU DISAGREE WITH THE SURGEON GENERAL OF
27 THE
28 UNITED STATES, WHO EXAMINED THE ISSUE OF PREVENTING
29 TOBACCO
30 USE AMONG YOUNG PEOPLE IN HIS CONCLUSION?
31 AND ACTUALLY, I SHOULD SAY "IN HER CONCLUSION,"
32 SINCE I BELIEVE THIS WAS JOCELYN ELDER'S REPORT --
33 MR. ESCHER: YOUR HONOR. EXCUSE ME.
34 MS. CHABER: Q. -- ON THE PSYCHOLOGY --

4514

1 THE COURT: JUST A SECOND. HOLD ON.
2 THERE'S AN OBJECTION.
3 MS. CHABER: I HADN'T FINISHED MY QUESTION, SO
I
4 WASN'T SURE.
5 THE COURT: I KNOW, BUT HE WAS TRYING TO
PREVENT
6 YOUR QUESTION.
7 MS. CHABER: OKAY.
8 MR. ESCHER: I'M OBJECTING TO THE FORM OF THE
9 QUESTION, YOUR HONOR.
10 THE COURT: I DO NOT REMEMBER WHETHER DR.
MARTIN
11 SAID THAT HE CONSIDERED THAT REPORT IN RENDERING HIS
12 OPINIONS IN THIS CASE.
13 HAS HE BEEN ASKED THAT QUESTION?
14 MS. CHABER: HE TESTIFIED --
15 THE COURT: LET ME JUST ASK YOU: DID YOU
16 CONSIDER THAT 1994 SURGEON GENERAL'S REPORT IN CONNECTION
17 WITH YOUR OPINIONS -- GIVING YOUR OPINIONS IN THIS CASE?
18 THE WITNESS: NO, YOUR HONOR.
19 MS. CHABER: THAT IS CONTRARY TO HIS TESTIMONY
20 ON FRIDAY. HE READ IT, YOUR HONOR. HE HAS EXAMINED IT.
HE
21 HAS READ IT. HE DOESN'T CONSIDER ACCEPTING IT IN HIS

22 OPINIONS. AND THAT WAS THE TESTIMONY WE HAD ON FRIDAY.
23 THE COURT: LET ME REPHRASE THE QUESTION AND
BE
24 SURE.
25 THE QUESTION THAT I'M ASKING YOU ISN'T WHETHER
26 YOU AGREE WITH IT OR WHETHER YOU'RE BASING ANY OPINIONS ON
27 IT.
28 THE QUESTION IS: DID YOU CONSIDER IT IN

4515

1 CONNECTION WITH RENDERING YOUR OPINIONS IN THIS CASE?
2 THE WITNESS: IN CONJUNCTION WITH RENDERING MY
3 OPINIONS IN THIS CASE, NO.
4 I HAVE READ THE DOCUMENT, AND THAT'S WHAT MY
5 RESPONSE WAS. I DID NOT CONSIDER IT IN RENDERING MY
6 OPINIONS IN THIS SPECIFIC CASE. NO, YOUR HONOR.
7 THE COURT: DID YOU CONSIDER IT IN RENDERING
8 OPINIONS THAT YOU'VE GIVEN IN ANY OTHER CASE OR THAT IS
THE

9 SAME AS THE OPINION THAT YOU ARE GIVING IN THIS CASE?
10 THE WITNESS: NO, YOUR HONOR.
11 MS. CHABER: Q. YOU HAVE NEVER, SIR,
EXAMINED
12 THE 1994 300-PAGE REPORT BY THE SURGEON GENERAL OF THE

13 UNITED STATES ON PREVENTING TOBACCO USE AMONG YOUNG PEOPLE
14 IN FORMING YOUR OPINIONS, SIR, WITH RESPECT TO WHETHER OR
15 NOT ADVERTISING AFFECTS YOUNG PEOPLE SMOKING?

16 A. I DID NOT.

17 I HAVE READ THE SURGEON GENERAL'S REPORT,
18 OBVIOUSLY. AND I HAVE ENDEAVORED TO LOOK AT THE
UNDERLYING

19 DOCUMENTS THAT ARE CITED IN THE SURGEON GENERAL'S REPORT.

20 BUT DID I RELY UPON THE SURGEON GENERAL'S
REPORT

21 AS IT IS PRESENTED? THE ANSWER IS NO.

22 Q. I'M NOT ASKING YOU IF YOU RELIED ON IT.

23 I'M ASKING YOU IF YOU READ IT AND REJECTED IT,

24 SIR?

25 A. NO, I DIDN'T REJECT IT.

26 Q. YOU JUST READ IT AND IT DIDN'T FORM ANY
OPINION,

27 PRO OR CON -- YOU JUST READ IT, AND IT HAS NO BASIS IN
YOUR

28 OPINIONS THAT YOU'VE COME TO RENDER HERE AS AN EXPERT ON

4516

1 ADVERTISING AND YOUTH; IS THAT CORRECT?

2 A. I THINK YOU'RE MISINTERPRETING WHAT I DID.

3 I'LL TRY AND MAKE IT AS CLEAR AS POSSIBLE. I

4 READ IT. NO, I DID NOT REJECT IT. AND I DID NOT AGREE

WITH

5 IT.

6 I MEAN, I DID NEITHER OF THOSE ACTIONS. I READ

7 IT, BECAUSE IT PROVIDES -- AS YOU ALREADY HAVE
CHARACTERIZED

8 IT, IT IS A LITERATURE SEARCH.

9 AND SO I USED IT AS A DEVICE FOR LOOKING AT THE
10 VARIOUS UNDERLYING -- TO UNDERSTAND WHAT WERE THE
UNDERLYING

11 DOCUMENTS ASSOCIATED WITH IT.

12 AND THEN I LOOKED AT THOSE UNDERLYING
DOCUMENTS,

13 MANY OF WHICH, I GUESS, IN THE DOCUMENT WE PROVIDED TO YOU
14 ARE THE LIST OF DOCUMENTS THAT I DID RELY UPON.

15 BUT SPECIFICALLY, NO, I DID NOT USE THE SURGEON
16 GENERAL'S REPORT. ONLY TO LOOK AT WHAT WERE THE DOCUMENTS
17 IN THE LITERATURE.

18 MS. CHABER: Q. SIR, YOU READ IT, YOU
19 CONSIDERED IT.

20 DID YOU ELIMINATE IT AS BEING AUTHORITATIVE?

21 A. I DID NEITHER. I JUST READ IT, AND THEN USED
THE

22 UNDERLYING DOCUMENTS THAT ARE IN IT. IT'S A LITERATURE
23 SEARCH, AND SO I WANTED TO LOOK AT THE DOCUMENTS THAT ARE
24 PART OF THE LITERATURE.

25 Q. AND YOU ARE THE ONE THAT CALLED IT A LITERATURE

26 SEARCH, NOT I.

27 I ASKED YOU, I BELIEVE ON FRIDAY, IF YOU WERE
28 AWARE OF THE PEER REVIEW PROCESS THAT THE SURGEON
GENERAL'S

4517

1 REPORT GOES THROUGH BEFORE IT IS PRODUCED AND PUT OUT
THERE

2 AS AN AUTHORITATIVE DOCUMENT, AND YOU WERE UNAWARE.

3 DO YOU RECALL THAT TESTIMONY ON FRIDAY?

4 A. SURE. I RECALL IT QUITE WELL.

5 Q. SIR, YOU REFERRED TO THE SURGEON GENERAL'S
6 REPORT, DID YOU NOT?

7 A. REFERRED TO IT?

8 Q. YOU REFERRED TO IT. YOU PICKED IT UP, YOU READ
9 IT, YOU REFERRED TO IT, YOU TOOK SOME THINGS OUT OF IT;
10 REFERRED TO IT?

11 A. I'M REALLY HAVING A HARD TIME FOLLOWING YOU. I
12 LOOKED AT IT. I READ IT. AND WHEN YOU SAY "PICKED A FEW
13 THINGS OUT OF IT," NO.

14 I THINK, GEE, I REALLY WENT IN AND TOOK A LOT
OF

15 THE UNDERLYING DOCUMENTS OUT OF HERE AND READ THE
UNDERLYING

16 DOCUMENTS."

17 I CAN GIVE YOU AN EXAMPLE, IF YOU WANT, OF AN

18 UNDERLYING DOCUMENT I READ, WHICH IS THAT THICK

19 (INDICATING).

20 Q. SIR, I'M TRYING FIND OUT WHAT YOU DID WITH

21 RESPECT TO THE SURGEON GENERAL'S REPORT.

22 YOU READ IT. SOMEHOW, THE INFORMATION IN IT

DID

23 NOT AFFECT YOUR OPINION, EITHER PRO OR CON.

24 YOU WERE TOTALLY NEUTRAL ABOUT THE INFORMATION

25 THAT YOU READ IN THE SURGEON GENERAL'S REPORT?

26 MR. ESCHER: OBJECTION, YOUR HONOR. THIS IS

27 CUMULATIVE AND UNNECESSARY, I BELIEVE.

28 THE COURT: I'M GOING TO ALLOW IT.

4518

1 YOU MADE THE OBJECTION ABOUT GOING INTO THE

2 DOCUMENTS UNDERLYING. SHE'S TRYING TO SEE IF SHE CAN LAY

A

3 FOUNDATION FOR THESE KINDS OF QUESTIONS OR NOT.

4 IT WAS YOUR OBJECTION THAT TRIGGERED THIS LINE

OF

5 EXAMINATION. I'M GOING TO LET HER PURSUE IT. AT LEAST,

I'M

6 GOING TO LET HER ASK THIS QUESTION.

7 THE WITNESS: I HAVE TO HAVE THE QUESTION READ

8 BACK TO ME. I'M SORRY.
9 (RECORD READ)
10 THE WITNESS: I THINK THE WORD "NEUTRAL"
11 MISCHARACTERIZES WHAT I HAVE BEEN TRYING TO SAY.
12 I READ THE REPORT. IT CERTAINLY IS A
13 VALUABLE DOCUMENT. I'M NOT ARGUING THAT IT'S A VERY
14 VALUABLE DOCUMENT, BECAUSE WHAT IT DID WAS PROVIDED ME
WITH

15 UNDERLYING -- THE DOCUMENTS THAT UNDERLIE THIS REPORT,
WHICH

16 I SPECIFICALLY LOOKED AT.

17 AND IN SOME CASES, THEY WERE MUCH, MUCH MORE
18 HELPFUL IN ME FORMULATING AN OPINION AS OPPOSED TO THIS
19 DOCUMENT ITSELF (INDICATING).

20 SO I TOOK THIS DOCUMENT. IS IT IN RELIANCE?
IT

21 MEANS I RELIED ON IT TO GET THE UNDERLYING DOCUMENTS THAT
22 ARE CITED IN HERE AND TO REVIEW THEM.

23 MS. CHABER: Q. AND, SIR, IN DOING SO, IS IT
24 FAIR TO SAY THAT YOU REJECTED THE CONCLUSION STATED BY THE
25 SURGEON GENERAL OF THE UNITED STATES IN THEIR 1994 REPORT
26 PREVENTING TOBACCO USE AMONG YOUNG PEOPLE THAT CIGARETTE
27 ADVERTISING CONVEYS INDEPENDENCE, HEALTHFULNESS,
28 ADVENTURE-SEEKING AND YOUTHFUL ACTIVITY THEMES THAT APPEAL

4519

1 TO YOUNG PEOPLE? IS IT FAIR TO SAY THAT, SIR?
2 MR. HARDY: YOUR HONOR, OBJECTION TO THAT.
THAT
3 IS ASKED AND ANSWERED, THAT VERY QUESTION.
4 MS. CHABER: I DON'T THINK SO.
5 THE COURT: I'LL ALLOW IT.
6 IF THERE'S AN ARGUMENT ABOUT WHETHER HE DID IT
7 BEFORE, IT'S QUICKER TO DO IT AGAIN THAN IT IS TO WORRY
8 ABOUT IT.
9 GO AHEAD AND ANSWER IT.
10 THE WITNESS: AS I LOOKED THROUGH THE
UNDERLYING
11 DOCUMENTS THAT ARE CONTAINED IN HERE --
12 MS. CHABER: YOUR HONOR, I WOULD MOVE TO
13 STRIKE. THAT'S NOT MY QUESTION.
14 THE COURT: I DON'T KNOW WHETHER IT IS OR NOT
15 BECAUSE --
16 MS. CHABER: MY QUESTION WAS WHETHER HE AGREED
17 WITH THE STATEMENT -- THE CONCLUSION REACHED BY THE
SURGEON
18 GENERAL, AS STATED?
19 THE COURT: I DON'T KNOW UNTIL I HEAR MORE
WORDS
20 OUT OF HIS MOUTH WHETHER IT'S RESPONSIVE OR NOT.

21 YOU ARE GOING TO HAVE TO EITHER WITHDRAW THE
22 QUESTION OR HEAR HIS ANSWER. THEN, IF YOU WANT TO MOVE TO
23 STRIKE, YOU CAN.
24 I CAN'T TELL RIGHT NOW.
25 MS. CHABER: CAN I HAVE THE QUESTION READ BACK
26 ONE MORE TIME, JUDITH, PLEASE.
27 (RECORD READ)
28 THE WITNESS: WELL FIRST OF ALL, IT'S YOUR

4520

1 PARAPHRASING OF WHAT IS CONCLUSION NO. 3 ON PAGE 195.
2 YOU ASKED ME WHETHER OR NOT I AGREED WITH THE

3 CONCLUSION, AND YOU STATED THE CONCLUSION. YOU READ ME A
4 CONCLUSION. YOU ASKED ME WHETHER I AGREED WITH IT.
5 AND I SAID TO YOU, "NO, I DO NOT AGREE WITH

IT."

6 MS. CHABER: Q. AND, SIR, WOULD YOU AGREE

THAT

7 YOUNG PEOPLE CONTINUE TO BE A STRATEGICALLY IMPORTANT
MARKET

8 FOR THE TOBACCO INDUSTRY?

9 A. DO I AGREE WITH THAT?

10 Q. YES.

11 A. NO, I DO NOT.

12 Q. AND SIR, IS IT FAIR TO SAY THAT YOU HAVE NEVER
13 BEEN CONSULTED BY THE FEDERAL TRADE COMMISSION OR ANY
14 OTHER REGULATORY BODY FOR A CITY, COUNTY, STATE OR COUNTRY TO
15 EVALUATE ADVERTISING AND ITS EFFECT ON YOUTH?

16 A. GOSH. I'M SORRY IF I'M NOT RESPONSIVE TO THE
17 WAY YOU ASKED THE QUESTION BECAUSE -- BUT WHAT TROUBLES ME IS
18 THAT I DID -- I DID EVALUATE ADVERTISING TOWARD YOUTH IN
19 CONJUNCTION WITH A CASE BEFORE THE FEDERAL TRADE
20 COMMISSION.

21 IT WAS NOT FOR THE FEDERAL TRADE COMMISSION,
22 ALTHOUGH IT WAS REPORTED TO THEM. THAT WAS IN THE CASE OF
23 BEVERAGES, AND IN PARTICULAR, SOFT DRINKS.

24 Q. SIR, IS IT FAIR TO SAY THAT YOU HAVE NEVER BEEN
25 CONSULTED BY THE FEDERAL TRADE COMMISSION OR ANY OTHER
26 REGULATORY BODY FOR A CITY, COUNTY, STATE OR COUNTRY TO
27 EVALUATE CIGARETTE ADVERTISING AS IT RELATES TO YOUTH?

28 A. WELL, THAT WOULD BE -- I WAS NEVER RETAINED BY

4521

1 THEM, ALTHOUGH I WAS ASKED A LOT BY THE FEDERAL TRADE
2 COMMISSION ON THAT SUBJECT IN A CASE.

3 BUT NO, I HAVEN'T BEEN RETAINED BY ANY
4 GOVERNMENTAL BODY RELATIVE --

5 Q. I SAID "CONSULTED."

6 A. I WASN'T CONSULTED BY ANY GOVERNMENTAL BODY.
7 Q. SIR, IS IT FAIR TO SAY THAT YOU HAVE NEVER BEEN
8 ASKED TO CONTRIBUTE TO ANY SURGEON GENERAL'S REPORT AS IT
9 RELATES TO CIGARETTE SMOKING OR ADVERTISING?
10 A. OH, THAT'S TRUE.
11 MS. CHABER: I HAVE NOTHING FURTHER, YOUR
HONOR.
12 THE COURT: OKAY. DOES ANYBODY HAVE ANYTHING
13 FURTHER FOR DR. MARTIN?
14 MR. ESCHER: I HAVE A FEW QUESTIONS, YOUR
HONOR.
15 THE COURT: MS. CHABER, IS THAT THE COURT'S
COPY
16 OR YOUR COPY OF THE REPORT?
17 MS. CHABER: I BELIEVE IT'S -- THE COURT HAS
ITS
18 OWN COPY, SO IT'S MINE.
19 THE COURT: THAT MAY BE YOURS.
20 MS. CHABER: YES.

21
22 REDIRECT EXAMINATION
23 BY MR. ESCHER: Q. GOOD MORNING, DOCTOR.
24 A. GOOD MORNING.
25 Q. HI.

26 YOU WERE ASKED A FEW QUESTIONS DURING
27 CROSS-EXAMINATION ABOUT YOUR COMPENSATION IN CONNECTION
WITH
28 THIS CASE AND OTHERS RELATING TO CIGARETTE ADVERTISING.

4522

1 DO YOU REMEMBER THAT?

2 A. YES, I DO.

3 Q. AND HAVE YOU EVER, IN ANY YEAR, RECEIVED AS
MUCH
4 AS 10 PERCENT OF YOUR TOTAL INCOME FROM YOUR EXPERT
WITNESS
5 WORK IN CONNECTION WITH CIGARETTE ADVERTISING?

6 A. OH, NO, NOT EVEN CLOSE.

7 Q. AND DO YOU THINK THAT THE TOTAL AMOUNT OF YOUR
8 COMPENSATION RELATING TO EXPERT WITNESS WORK WITH RESPECT
TO
9 CIGARETTE ADVERTISING OVER THE YEARS THAT YOU'VE BEEN
10 RETAINED TO DO THAT IS LESS THAN 5 PERCENT OF YOUR TOTAL
11 INCOME?

12 A. GEE, I GUESS I COME IN AROUND 2, 3 PERCENT
MAYBE.

13 Q. NOW, WE TALKED A LITTLE BIT ABOUT THE ISSUE OF
14 PROMOTIONAL ACTIVITIES RELATING TO CIGARETTE ADVERTISING
AND
15 PROMOTIONS THAT ARE REPORTED TO THE FEDERAL TRADE

16 COMMISSION.
17 DO YOU REMEMBER THAT?
18 A. YES.
19 Q. AND DO YOU REMEMBER DRAWING A DISTINCTION
BETWEEN
20 ADVERTISING MONEY AND PROMOTIONAL MONEY?
21 A. YES, I DO.
22 Q. AND YOU CONSIDERED THAT SOME OF THE PROMOTIONAL
23 ACTIVITIES WERE, IN FACT, MORE REASONABLY VIEWED AS BEING
24 PART OF PRICING; IS THAT RIGHT?
25 A. THAT'S CORRECT.
26 Q. AND DO YOU HAVE A SENSE FOR -- OF THE TOTAL
27 AMOUNT OF DOLLARS IN CIGARETTE ADVERTISING AND PROMOTION
AS
28 REPORTED TO THE FEDERAL TRADE COMMISSION, APPROXIMATELY
WHAT
4523
1 PERCENT OF THE TOTAL SPENDING RELATES TO THINGS THAT ARE
2 PURELY PRICE?
3 A. WELL, I WON'T USE THE WORD "PURELY PRICE" BUT
4 MOSTLY PRICE.
5 I DON'T WANT TO LEAVE A WRONG IMPRESSION, BUT
6 IT'S MOSTLY PRICE-ORIENTED, AND IT'S OVER 50 PERCENT OF
THE
7 TOTAL AMOUNT.

9 ACTIVITIES, LIKE CONCERTS AND THE LIKE, DID YOU HAVE --

10 A. LIKE SOUTH OF MARKET STREET?

11 THE COURT: ONE AT A TIME.

12 THE WITNESS: I'M SORRY. LIKE SOUTH OF MARKET
13 STREET?

14 MR. ESCHER: Q. LIKE THAT, AS AN EXAMPLE.

15 A. YES. THE PUBLIC ENTERTAINMENT, YES. IT'S 2.1
16 PERCENT, WHICH MEANS ABOUT 2.1 CENTS ON EVERY -- FOR EVERY
17 DOLLAR SPENT TOTALLY.

18 Q. DOCTOR, YOU WERE ASKED SOME QUESTIONS ABOUT THE
19 CONCLUSIONS OF THE SURGEON GENERAL'S REPORT IN 1994.

20 DO YOU REMEMBER THAT?

21 A. THAT SEEMED TO BE WHAT I WAS BEING ASKED HERE,
22 YES.

23 Q. OKAY. YOU OFFERED THREE GOOD REASONS THAT YOU
24 DECIDED NOT TO LOOK AT INTERNAL COMPANY DOCUMENTS.

25 WHAT WERE THOSE REASONS?

26 A. WELL, THE FIRST IS KIND OF LIKE WHAT I
MENTIONED

27 HERE BEFORE. WHEN I READ THE NEWS REPORTS, THERE ARE

28 THOUSANDS OR MILLIONS OF DOCUMENTS.

1 SO PHYSICALLY, I JUST -- YOU COULDN'T LOOK AT
ALL
2 OF THOSE DOCUMENTS. AND JUST LOOKING AT THE TITLE OF THEM
3 WOULD NOT BE ENOUGH.
4 YOU'D LITERALLY HAVE TO LOOK AT EVERY SINGLE
5 DOCUMENT AND REVIEW IT. SO THERE'S JUST A PHYSICAL
PROBLEM
6 THAT'S ASSOCIATED WITH THAT.
7 AND THE SECOND PROBLEM THAT YOU REALLY HAVE IN
8 LOOKING AT ANY KIND OF DOCUMENTS OR LETTERS OR THINGS OF
9 THAT SORT, IS THAT YOU HAVE TO UNDERSTAND THE CONTEXT IN
10 WHICH THOSE DOCUMENTS WERE WRITTEN, TO WHOM THEY WERE
11 PRESENTED, AND WHO WERE THE PEOPLE WHO WROTE THEM. AND IN
12 SOME CASES, YOU KNOW, MAYBE THEY WEREN'T EVEN DELIVERED TO
13 SOMEBODY.
14 AND THE THEN THIRD, PERHAPS THE MOST IMPORTANT
15 REASON FOR NOT LOOKING AT INTERNAL COMPANY DOCUMENTS IS
16 BECAUSE THEY WERE NOT WHAT I WAS LOOKING FOR OR WHAT I
17 VIEWED AS WHAT I WAS DOING IN THIS CASE.
18 THEY WERE NOT SOMETHING THAT I WAS GOING TO
LOOK
19 AT, BECAUSE I WAS LOOKING AT SMOKING INITIATION, SMOKING
20 BEHAVIOR, NOT -- I WASN'T SUPPOSED TO GO AND REVIEW
COMPANY
21 DOCUMENTS AND SEE WHAT THEY WERE LIKE AND CHARACTERIZE
22 THEM. THAT WAS NOT MY JOB IN THIS CASE.

23 Q. SO IS IT FAIR TO SAY, FROM YOUR PERSPECTIVE,
THAT
24 WHATEVER IS IN THE COMPANY FILES IS IRRELEVANT TO YOUR
25 OPINIONS IN THIS CASE?
26 A. AS FAR AS THE OPINIONS I HAVE IN THIS CASE,
THEY

27 WERE IRRELEVANT.
28 Q. NOW, YOU SAID THAT YOU'D LOOKED AT SOME OF THE

4525
1 UNDERLYING ARTICLES AND MATERIALS THAT ARE CITED IN THE
1994
2 SURGEON GENERAL'S REPORT?
3 A. YES.
4 Q. AND YOU WENT AND LOOKED AT THE PRIMARY SOURCES
5 YOURSELF?
6 A. YES, I DID.
7 Q. DID YOU SEE ANY EXAMPLES WHERE THE PRIMARY
SOURCE
8 DID NOT IN FACT SUPPORT THE SURGEON GENERAL'S CONCLUSIONS?
9 A. IN FACT, ONE OF THE THINGS THAT BOTHERED ME --
10 AND SO WE GET THE PAGE COUNT, THE SURGEON GENERAL'S REPORT
11 IS -- I THINK I WAS TOLD IT WAS 300 OR SOME PAGES LONG.
12 THERE'S A STATEMENT IN THE SURGEON GENERAL'S

13 REPORT THAT ADVERTISING CAN AFFECT PRIMARY DEMAND FOR
14 PRODUCTS.
15 Q. IS THAT CONCLUSION GENERALLY INCONSISTENT WITH
16 YOUR UNDERSTANDING OF THE PRINCIPLES THAT APPLY IN YOUR
AREA
17 OF MARKETING?
18 A. THAT'S INCONSISTENT.
19 WHAT REALLY BOTHERED ME ABOUT IT WAS THE SOURCE
20 THAT WAS BEING CITED. THIS IS -- THE SOURCE IS A 1982
21 TEXTBOOK BY MICHAEL RAY, R-A-Y, WHO IS FROM STANFORD.
22 AND I WAS ALMOST SHOCKED WHEN I SAW THAT
THERE'S
23 NO PAGE CITATION IN THE SURGEON GENERAL'S REPORT, SO IT
24 MAKES IT REALLY DIFFICULT.
25 AND THE REASON I WAS SURPRISED IS, I USED THAT
26 TEXTBOOK IN TEACHING ADVERTISING MANAGEMENT, AND I KNOW
27 MICHAEL RAY. I MEAN, AND I HAVE KNOWN MICHAEL RAY A LONG
28 TIME. IN FACT, HE'S EVEN BEEN A MEMBER -- OR WAS A MEMBER

4526
1 OF THE EDITORIAL REVIEW BOARD ON THE JOURNAL.
2 SO I HAVE GONE AND LOOKED FOR THE BOOK. AND I
3 CANNOT FIND ANYTHING IN THAT TEXTBOOK THAT EVEN COMES
CLOSE
4 TO SUGGESTING THAT PROPOSITION.
5 AND I'M CONCERNED THAT SOMEBODY EITHER

MISQUOTED,

6 MISUNDERSTOOD OR MAYBE THEY JUST MADE A CLERICAL ERROR. I
7 DON'T KNOW. BUT THERE'S AN EXAMPLE OF WHY ONE WANTS TO
LOOK

8 AT THE UNDERLYING DOCUMENTATION.

9 Q. AND ARE YOU AWARE, DOCTOR, THAT DR. RICHARD
10 POLLAY WAS ONE OF THE AUTHORS OF THE CHAPTER IN THE 1994
11 SURGEON GENERAL'S REPORT THAT DEALT WITH THE ISSUE OF
12 CIGARETTE ADVERTISING?

13 A. OH, YES.

14 Q. THAT'S THE CHAPTER IN WHICH THIS CITATION

15 APPEARED THAT YOU JUST CITED?

16 A. I THINK IT MIGHT BE THAT CHAPTER. I DON'T HAVE
17 THE REPORT, BUT I THINK IT MAY BE.

18 MR. ESCHER: I DON'T HAVE ANY FURTHER
QUESTIONS.

19 THANK YOU VERY MUCH, DOCTOR.

20 THE COURT: DOES ANYBODY HAVE ANYTHING
FURTHER?

21

22 RECROSS-EXAMINATION

23 BY MS. CHABER: Q. SIR, ISN'T IT TRUE THAT
TO

24 EXAMINE AND WRITE SOME ARTICLES CRITICIZING SOME OF THE

25 PEOPLE WHO HAVE WRITTEN THE PRIMARY RESEARCH, R.J.
REYNOLDS
26 GAVE YOU \$90,000 TO PERFORM THAT STUDY?
27 A. NO. THEY DIDN'T GIVE ME \$90,000 TO DO WHAT YOU
28 JUST SAID, NO.

4527

1 Q. THEY DID GIVE YOU \$90,000, SIR, TO FUND A
STUDY,

2 DID THEY NOT?

3 A. WELL, THEY GAVE ME \$90,000 IN RESPONSE TO A
4 REQUEST ON MY PART.

5 Q. OH, YOU --

6 A. THEY DIDN'T COME AND JUST SAY, "HERE'S
\$90,000."

7 Q. YOU SOLICITED THEM, SIR, FOR FUNDING SO THAT
YOU

8 COULD WRITE SOMETHING CRITICAL OF SOME OF THE PEOPLE WHO
DID

9 THE UNDERLYING RESEARCH; CORRECT?

10 A. NO. THAT WASN'T MY MOTIVE. YOU TOTALLY
11 MISCHARACTERIZE. I'M SORRY, YOU KNOW. GOSH, I WENT AND
GOT

12 RESEARCH FUNDING, TRUE, FROM R.J. REYNOLDS, NOT WHILE I
WAS

13 INVOLVED IN ANY LITIGATION FOR THE COMPANY.

14 AND I SENT THEM A RESEARCH PROPOSAL TO EXAMINE
15 THE RESEARCH THAT HAD BEEN DONE SPECIFICALLY AND REPORTED
16 SPECIFICALLY IN THE JOURNAL OF THE AMERICAN MEDICAL
17 ASSOCIATION.

18 MY OBJECTIVE WAS NOT TO COME OUT AND BE
19 CRITICAL. MY OBJECTIVE WAS TO GO OUT AND LOOK AT THIS AND
20 MAKE A FAIR EVALUATION OF THAT RESEARCH.

21 Q. SIR, WASN'T YOUR PROPOSAL TO SOLICIT A CRITIQUE
22 ON THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION'S
23 ARTICLES ON ADVERTISING AND ITS EFFECT ON YOUTH?

24 A. YEAH. BUT THE WORD "CRITIQUE" IN MY LANGUAGE
IS
25 TO LOOK AT THE RESULTS.

26 WHAT I PROPOSED TO DO IS THAT I WOULD,
27 INDEPENDENTLY, WITH ABSOLUTELY NO STRINGS ATTACHED FROM
R.J.
28 REYNOLDS, I WOULD LOOK AT THE DOCUMENTS AND REPORT THE

4528

1 RESULTS.

2 AND THEY WOULD HAVE ABSOLUTELY NO CONTROL OVER

3 WHAT WAS DONE IN THAT RESEARCH, NOR WHAT THAT RESEARCH
WOULD

4 BE. I'M THE ONE THAT MADE UP THE PROPOSAL.

5 Q. SIR, YOU DIDN'T GO TO THE AMERICAN CANCER
SOCIETY
6 WITH THAT PROPOSAL, DID YOU?
7 A. NO, I DIDN'T. IT WAS -- IN FACT, THE PROPOSAL
8 JUST HAPPENED TO COME ABOUT IN A CHANCE MEETING WITH A
9 FORMER STUDENT.
10 I SAID, "WOULD YOU FUND SOME RESEARCH?" AND HE
11 SAID "YES." AND I SENT THEM A PROPOSAL.
12 Q. AND R.J. REYNOLDS GAVE YOU \$90,000 TO WRITE
THIS
13 RESEARCH; CORRECT?
14 A. NO, THEY DID NOT. THAT'S NOT A FAIR
15 CHARACTERIZATION.
16 THEY GAVE ME \$90,000 TO PAY THE EXPENSES AND TO
17 DO THE RESEARCH, NOT TO JUST TO WRITE THE RESEARCH.
18 Q. SIR, THERE ARE THOUSANDS OR MILLIONS OF
19 DOCUMENTS, I THINK YOU SAID, AND THERE'S SOME PHYSICAL
20 PROBLEM OF LOOKING AT THESE DOCUMENTS.
21 IS THAT WHAT YOU SAID TO MR. ESCHER JUST NOW?
22 DID I UNDERSTAND THAT CORRECTLY?
23 A. WELL, AS I HEARD THE REPORT ON HOW MANY
DOCUMENTS
24 THERE WERE, IT OCCURRED TO ME IT PROBABLY WOULD BE KIND OF
25 DIFFICULT.
26 Q. SIR, YOU ARE APPARENTLY COMPUTER-LITERATE.
27 YOU DO THESE NICE POWER POINT PRESENTATIONS.

28 THOSE ARE DONE ON A COMPUTER, ARE THEY NOT?

4529

1 A. WELL, YEAH. I DO MAKE SOME POWER POINT
2 PRESENTATIONS.

3 I DON'T KNOW WHETHER YOU'D CALL ME
4 COMPUTER-LITERATE.

5 Q. YOU KNOW HOW TO SEARCH THE INTERNET, DON'T YOU,
6 SIR?

7 A. YES.

8 Q. YOU KNOW HOW TO GO ON TO THE DOCUMENT SITES

THAT

9 EACH OF THE TOBACCO COMPANIES HAVE, THAT THEY HAVE THEIR
10 DOCUMENTS ON, AND THAT ALLOW YOU TO SEARCH THOSE DOCUMENTS
11 BY NOT ONLY TITLE BUT BY CONTENT?

12 A. I SUPPOSE. I'VE NEVER DONE THAT.

13 Q. YOU'VE NEVER TRIED TO LOOK AND TYPE IN THE

WORDS

14 "ADVERTISING, CHILDREN, YOUTH, ADVERTISING," ANYTHING LIKE
15 THAT IN AN R.J. REYNOLDS DOCUMENT SITE OR A PHILIP MORRIS
16 DOCUMENT SITE?

17 A. WELL, I WOULD BE VERY HESITANT TO DO THAT, AND
18 I

19 WILL TELL YOU WHY.

20 THAT MEANS THAT I WOULD THEN HAVE BEEN RELYING
UPON SOMEBODY ELSE'S CODING SYSTEM.

21 SO WHEN I SAID THAT IF I WANTED TO LOOK AT
22 DOCUMENTS, IF I WERE GOING TO LOOK AT DOCUMENTS, I WOULD
23 WANT TO LOOK AT ALL OF THE DOCUMENTS AND READ THEM.

24 I FOUND IN A LOT OF INSTANCES THAT THOSE CODING
25 SYSTEMS, YOU KNOW, YOU PUT THE WORD IN "SEARCH FOR," DON'T
26 ALWAYS WORK SO WELL.

27 I KNOW WE ALL THINK THAT THE COMPUTER SYSTEMS
28 WORK PERFECTLY, BUT THEY DON'T. AND SO I WOULD BE VERY,

4530

1 VERY HESITANT TO RELY ON THAT.

2 REMEMBER, THERE WERE TWO OTHER REASONS WHY I
3 DIDN'T LOOK AT THOSE DOCUMENTS.

4 Q. WE ARE ON THE FIRST ONE.

5 A. RIGHT.

6 Q. WE ARE ON THIS FIRST REASON.

7 SO THERE MIGHT BE DOCUMENTS THAT ARE MISCODED;

IS

8 THAT A FAIR REITERATION OF WHAT YOU JUST SAID?

9 A. WELL, THEY MAY BE MISCODED OR NOT CODED AT ALL.

10 Q. BUT YOU DIDN'T LOOK TO SEE IF THERE WERE ANY
11 DOCUMENTS AT ALL THERE, DID YOU?

12 A. THAT'S MISCHARACTERIZES. I THINK THAT'S WRONG
TO

13 SAY.
14 I DID NOT GO IN ON THE INTERET AND SEARCH FOR
15 COMPANY DOCUMENTS. I AGREE.
16 Q. AND YOU DIDN'T ASK R.J. REYNOLDS WHAT DOCUMENTS
17 THEY HAD IN THEIR POSSESSION THAT THEY COULD GIVE TO YOU
OR
18 WHAT THE CONTEXT FOR THOSE DOCUMENTS WERE, DID YOU?
19 A. WELL, AS YOU AND I KNOW, I HAVE NEVER HAD ANY
20 CONTACT ON THAT SUBJECT OR ANY OTHER RESEARCH WITH ANYBODY
21 AT R.J. REYNOLDS.
22 Q. SIR --
23 A. I WOULD NOT -- AS YOU ASKED ME IN MY
DEPOSITION,
24 I WOULD NOT ASK AN ATTORNEY TO FURNISH ME WITH THOSE
25 DOCUMENTS SIMPLY BECAUSE -- I MEAN, THINK OF IT, I WOULD
26 COME HERE AND SAY "YEAH, I LOOKED AT THESE DOCUMENTS.
THESE
27 ARE THE ONES THE COMPANY GAVE ME." I MEAN, THAT WOULD BE
SO
28 UNSCIENTIFIC, AND SO INVALID.

4531
1 SO NO, I WASN'T GOING TO GO TO R.J. REYNOLDS
AND
2 SAY, "HEY, GIVE ME THE DOCUMENTS."
3 Q. YOU NEVER ASKED AN ATTORNEY FROM R.J. REYNOLDS

IF
4 YOU COULD HAVE ACCESS TO THE INTERNAL DOCUMENTS OF THE
5 COMPANY, OF THE R.J. REYNOLDS COMPANY; IS THAT TRUE?
6 MR. ESCHER: OBJECTION, YOUR HONOR. THIS
7 QUESTION HAS BEEN ASKED AND ANSWERED.
8 THE COURT: YOU'VE ANSWERED THAT, HAVEN'T YOU?

9 THE WITNESS: I BELIEVE I HAVE.
10 THE COURT: YOU CAN GO AHEAD AND ANSWER ONE
MORE
11 TIME. LET'S NOT BE REPETITIVE ON THIS.
12 YOU CAN ANSWER IT ONE MORE TIME, BUT LET'S NOT
GO
13 BACK OVER THIS.
14 THE WITNESS: NO, I DIDN'T GO TO THE ATTORNEYS
15 AND SAY, "GIVE ME ACCESS TO -- OR GIVE ME THE DOCUMENTS."
16 MS. CHABER: Q. SIR, IF I UNDERSTAND
17 CORRECTLY, HAD YOU LOOKED AT ANY DOCUMENTS, IT WOULD BE
18 IRRELEVANT TO YOUR OPINIONS, NO MATTER WHAT THEY SAID,
19 CORRECT?
20 A. WELL, IT IS NOT WHAT I WAS LOOKING AT.
21 I WAS NOT THERE TO EVALUATE INTERNAL COMPANY
22 DOCUMENTS. THAT'S THE POINT.
23 Q. IT WOULD BE IRRELEVANT TO YOUR OPINIONS, WOULD
IT

24 NOT, NO MATTER WHAT IT SAID; IS THAT CORRECT?
25 A. IT WOULD HAVE TO BE IRRELEVANT, BECAUSE THAT
WAS
26 NOT WHAT I WAS LOOKING AT, WHAT WAS THE INTERNAL COMPANY
27 DOCUMENTS.
28 MS. CHABER: I HAVE NOTHING FURTHER.

4532

1 THE COURT: MAY DR. MARTIN BE EXCUSED?
2 MR. ESCHER: YES, YOUR HONOR.
3 THE COURT: MS. CHABER, MAY HE BE EXCUSED?
4 MS. CHABER: YES.
5 THE COURT: YOU ARE EXCUSED.
6 (WITNESS EXCUSED)
7 THE COURT: OKAY. WHO IS CALLING THE NEXT
8 WITNESS AND WHO IS THE NEXT WITNESS?
9 MR. FURR: R.J. REYNOLDS CALLS DR. WILLIAM
10 WECKER.
11 THE CLERK: PLEASE COME FORWARD. PLEASE STAND
12 RIGHT HERE AND RAISE YOUR RIGHT HAND. THIS WAY, PLEASE.
13 TESTIMONY OF
14 WILLIAM WECKER, PH.D,
15 A WITNESS CALLED ON BEHALF OF THE DEFENSE, HAVING BEEN
DULY
16 SWORN, TESTIFIED AS FOLLOWS:
17 THE CLERK: PLEASE STATE YOUR NAME.

18 THE WITNESS: WILLIAM WECKER, W-E-C-K-E-R.
19 THE CLERK: THANK YOU. PLEASE TAKE THE STAND.
20 MR. FURR: YOUR HONOR, LET ME HAND THE CLERK
21 THREE-HOLE COPIES OF THE DEMONSTRATIVES FOR DR. WECKER.
22 I ALSO HAVE A COPY FOR THE COURT, SINCE HE'S
23 UNABLE TO SEE WHAT WE ARE TALKING ABOUT.
24 THE COURT: OKAY. THANK YOU.
25

26 DIRECT EXAMINATION

27 BY MR. FURR: Q. GOOD MORNING, DR. WECKER.
28 A. GOOD MORNING.

4533

1 Q. WOULD YOU BEGIN BY INTRODUCING YOURSELF TO THE
2 JURY, PLEASE.
3 A. I'M WILLIAM WECKER. I LIVE HERE, NEARBY IN
4 NOVATO, CALIFORNIA, JUST NORTH A COUPLE OF MINUTES.
5 Q. DR. WECKER, YOU ARE A STATISTICIAN; IS THAT
6 CORRECT?
7 A. THAT'S RIGHT.
8 Q. YOU ARE MARRIED, AREN'T YOU, SIR?
9 A. YES.
10 Q. HOW LONG HAVE YOU BEEN MARRIED?
11 A. I BETTER GET THIS RIGHT.

12 Q. THIS IS NOT A GOOD START FOR A STATISTICIAN,
13 DOCTOR.
14 A. 35 YEARS.
15 Q. LET ME ASK AN EASIER QUESTION.
16 HOW MANY CHILDREN DO YOU HAVE?
17 A. THREE, AND ONE GRANDCHILD.
18 Q. OKAY. NOW, YOU ARE A PH.D. STATISTICIAN, NOT A
19 MEDICAL DOCTOR; IS THAT CORRECT?
20 A. THAT'S RIGHT.
21 Q. DR. WECKER, YOU ARE NOT HERE TO OFFER MEDICAL
22 OPINIONS IN THIS CASE, ARE YOU, SIR?
23 A. THAT'S RIGHT.
24 Q. FOR EXAMPLE, YOU ARE NOT HERE TO OFFER AN
OPINION
25 AS TO THE CAUSE OF MRS. WHITELEY'S CANCER, ARE YOU, SIR?
26 A. I'M NOT.
27 Q. I HAVE ASKED YOU TO COME HERE AND PROVIDE
EXPERT
28 OPINIONS AS A STATISTICIAN, CORRECT?

4534

1 A. THAT'S RIGHT.
2 Q. OKAY. WELL, THE JURY HAS HEARD A LOT ABOUT
3 STATISTICS BUT WE HAVEN'T HAD A STATISTICIAN TESTIFY YET.
4 COULD YOU BEGIN BY EXPLAINING TO THE JURY WHAT
5 PROFESSIONAL STATISTICIANS DO FOR A LIVING.

6 A. WELL, WE'RE THE ONES THAT ARE NOT PURELY
7 RESEARCHERS, THAT ACTUALLY DO STATISTICS. THEY COLLECT
DATA
8 AND THEY ANALYZE DATA. THEY'RE INVOLVED FROM BEGINNING TO
9 END IN THE DESIGN OF THE DATA COLLECTION SYSTEM, SOMETIMES
10 CALLED THE EXPERIMENT, THROUGH THE ACTUAL COLLECTION OF
THE
11 DATA.
12 AND THEN THE ANALYSIS, THE STATISTICIAN
13 DETERMINES WHAT MAY THEN VALIDLY BE SAID ABOUT THE DATA
THAT
14 HAS BEEN COLLECTED.

15 Q. LET ME APPROACH IT THIS WAY.
16 THE JURY HAS HEARD A LOT ABOUT EPIDEMIOLOGY.
LET
17 ME ASK YOU TO EXPLAIN TO THE JURY HOW STATISTICS IS
RELATED
18 TO EPIDEMIOLOGY.
19 A. EPIDEMIOLOGY IS STATISTICS. STATISTICS CAN BE
20 APPLIED AND IS APPLIED TO A WHOLE RANGE OF DIFFERENT
AREAS.
21 WHEN STATISTICS IS APPLIED TO ISSUES OF HUMAN
22 HEALTH, WE CALL IT THEN EPIDEMIOLOGY.
23 Q. DR. WECKER, I WANT YOU TO ASSUME THAT CERTAIN

OF
24 PLAINTIFFS' EXPERTS, INCLUDING DR. DAVIS, HAVE TESTIFIED
25 THAT 420,000 DEATHS ARE CAUSED EACH YEAR BY SMOKING.
26 DO YOU UNDERSTAND?
27 A. YES.
28 Q. I WOULD ALSO LIKE FOR YOU TO ASSUME THAT
CERTAIN

4535
1 OF PLAINTIFFS' EXPERTS HAVE TESTIFIED, AGAIN INCLUDING DR.
2 DAVIS, THAT ONE-IN-TWO REGULAR LONG-TERM SMOKERS WILL DIE
AS
3 A RESULT OF A DISEASE CAUSED BY THEIR SMOKING.
4 ARE YOU WITH ME THERE, SIR?
5 A. YES.
6 Q. DR. WECKER, ARE YOU FAMILIAR WITH THE TYPES OF
7 ANALYSES THAT HAVE BEEN PERFORMED TO REACH THOSE TYPES OF
8 SMOKING-RELATED MORTALITY ESTIMATES?
9 A. YES, I'M FAMILIAR WITH THOSE.
10 Q. AND ARE THOSE TYPES OF ANALYSES STATISTICAL IN
11 NATURE?
12 A. YES, THEY'RE ENTIRELY STATISTICAL IN THAT THEY
13 RESULT IN FROM A STATISTICAL FORMULA.
14 Q. AND DR. WECKER, ARE YOU PREPARED TO OFFER TO
THE
15 JURY YOUR EXPERT STATISTICAL OPINION AS TO WHETHER OR NOT

16 THOSE ANALYSES THAT I HAVE ASKED YOU TO ASSUME ARE
ACCURATE

17 AND RELIABLE FROM A STATISTICAL PERSPECTIVE?

18 A. YES, I CAN OFFER AN OPINION ON THAT.

19 Q. BEFORE WE GET TO YOUR OPINIONS, LET'S BACK UP,
20 AND LET ME ASK YOU TO DESCRIBE YOUR FORMAL EDUCATION AND
21 EXPERIENCE AS A STATISTICIAN.

22 AND LET'S START WITH THE EDUCATION.

23 A. OKAY. I GRADUATED IN 1963 FROM THE UNITED
STATES

24 AIR FORCE ACADEMY. AND THEN, AFTER A NUMBER OF YEARS OF

25 MILITARY SERVICE, I RETURNED AS A CIVILIAN TO THE
UNIVERSITY

26 OF MICHIGAN, WHERE I RECEIVED THE MASTER OF SCIENCE AND
THE

27 PH.D. DEGREE IN STATISTICS AND APPLIED MATHEMATICS. THAT

28 WAS ABOUT 1972.

4536

1 Q. YOU GOT YOUR PH.D. IN STATISTICS AND APPLIED
2 MATHEMATICS FROM THE UNIVERSITY OF MICHIGAN IN 1972?

3 A. RIGHT.

4 Q. NOW, YOU MENTIONED THAT YOU -- THERE WAS A
PERIOD

5 OF TIME IN WHICH YOUR EDUCATION WAS INTERRUPTED FOR
6 MILITARY
7 SERVICE; IS THAT CORRECT, SIR?
8 A. YOU CAN PUT IT THAT WAY. I DIDN'T THINK IT WAS
9 INTERRUPTED.
10 Q. THAT'S NOT THE WAY YOU PUT IT?
11 A. IT WASN'T INTERRUPTED. IT WAS MY PROFESSIONAL
12 DUTY. I WAS AN OFFICER IN THE AIR FORCE FOR A NUMBER OF
13 YEARS.
14 Q. IN FACT, YOU WERE A FIGHTER PILOT IN THE AIR
15 FORCE FOR A NUMBER OF YEARS, WEREN'T YOU, SIR?
16 A. YES.
17 Q. LET'S GO BACK TO YOUR EDUCATION.
18 AFTER YOU RECEIVED YOUR PH.D., WHAT DID YOU DO
19 NEXT PROFESSIONALLY?
20 A. I ACCEPTED A JOB ON THE FACULTY AS AN ASSISTANT
21 PROFESSOR AT THE UNIVERSITY OF CHICAGO.
22 Q. HOW LONG WERE YOU AT THE UNIVERSITY OF CHICAGO?
23 A. ABOUT 12 YEARS.
24 Q. AND DID YOU TEACH APPLIED MATHEMATICS AND
25 STATISTICS AT THE UNIVERSITY OF CHICAGO?
26 A. YES, I DID, AS WELL AS THEORETICAL AREAS.
27 Q. DID YOU ALSO CONDUCT RESEARCH IN MATHEMATICAL
28 AND
29 STATISTICAL AREAS WHILE YOU WERE AT THE UNIVERSITY OF
30 CHICAGO?

4537

1 A. YES. THAT'S A MAJOR RESEARCH UNIVERSITY. SO
IF
2 ANYTHING, THE LION'S SHARE OF THE JOB WAS RESEARCH.
3 Q. I ASSUME YOU CAME IN AS AN ASSISTANT PROFESSOR;
4 IS THAT CORRECT?
5 A. RIGHT.
6 Q. WERE YOU SUBSEQUENTLY PROMOTED TO ASSOCIATE
7 PROFESSOR?
8 A. RIGHT. THAT'S THE NEXT ONE.
9 Q. YOU STAYED THERE FOR ABOUT 12 YEARS.
10 THEN IN 1984, YOU LEFT THE UNIVERSITY OF
CHICAGO,
11 CORRECT?
12 A. RIGHT.
13 Q. AND WHERE DID YOU GO FROM THERE?
14 A. I ACCEPTED AN OFFER FROM THE UNIVERSITY OF
15 CALIFORNIA AT DAVIS.
16 Q. WHAT TYPE OF POSITION WAS THAT AT THE
UNIVERSITY
17 OF CALIFORNIA?
18 A. IT'S EXACTLY THE SAME THING, TEACHING AND
19 RESEARCH IN THE GRADUATE SCHOOL. DOING THE SAME KIND OF
20 WORK, JUST DOING IT IN A NICER CLIMATE.

21 Q. DR. WECKER, WE HAVE BEEN DOING PRETTY WELL SO
22 FAR. ONE THING YOU HAVE TO BE CAREFUL ABOUT, THAT YOU
ALLOW
23 ME TO FINISH MY QUESTION BEFORE YOU BEGIN ANSWERING THE
24 QUESTION, BECAUSE THE COURT REPORTER HAS TROUBLE GETTING
US
25 BOTH AT THE SAME TIME. OKAY?
26 A. I UNDERSTAND.
27 Q. NOW, AT THE UNIVERSITY OF CALIFORNIA, YOU
BECAME
28 A FULL PROFESSOR; IS THAT CORRECT?

4538

1 A. YES.
2 Q. AND AS A FULL PROFESSOR, DID YOU HAVE A TENURED
3 POSITION?
4 A. YES.
5 Q. WHAT DOES IT MEAN TO HAVE A TENURED POSITION?
6 A. THAT'S A UNIVERSITY THING. IT MEANS,
BASICALLY,
7 UNLESS YOU SHOOT SOMEBODY, THEY CAN'T FIRE YOU.
8 Q. SO YOU WERE THERE FOR LIFE, I TAKE IT, BARRING
9 THE TYPE OF OFFENSE THAT YOU JUST DESCRIBED?
10 A. YES.
11 Q. WHAT WERE YOU DOING AT THE UNIVERSITY OF

12 CALIFORNIA?
13 A. SAME THING AS THE UNIVERSITY OF CHICAGO.
14 TEACHING AND RESEARCH AND STATISTICS AND APPLIED
15 MATHEMATICS.
16 IF THERE IS WAS ANY DIFFERENCE AT ALL, I DID
MORE
17 WORK IN COMPUTER SCIENCE, BECAUSE COMPUTERS WERE BECOMING
18 MORE AND MORE IMPORTANT AS TIME WENT ON.
19 Q. WHAT TYPE OF RESEARCH WERE YOU INVOLVED IN AT
THE
20 UNIVERSITY?
21 A. MAINLY STATISTICAL METHODS, AND BETTER, MORE
22 POWERFUL WAYS TO ANALYZE DATA, ARRIVE AT VALID
CONCLUSIONS.
23 Q. DID YOU ALSO BEGIN DOING WHAT IS KNOWN AS
24 CONSULTING ON STATISTICAL ISSUES WHILE YOU WERE AT THE
25 UNIVERSITY OF CALIFORNIA?
26 A. ACTUALLY, I HAD DONE SOME CONSULTING FROM THE
27 EARLIEST DAYS THAT I WAS A PROFESSOR. AND I CONTINUED
FROM
28 TIME TO TIME TO DO CONSULTING AT THE UNIVERSITY OF

4539
1 CALIFORNIA, BUT NOT VERY MUCH, BECAUSE MOST OF MY TIME WAS
2 TAKEN UP BY MY JOB AS A PROFESSOR.
3 Q. AND YOU LEFT THE UNIVERSITY OF CALIFORNIA

AROUND

4 1990; IS THAT CORRECT?

5 A. 1990, RIGHT.

6 Q. AND WHAT DID YOU DO NEXT WHEN YOU LEFT THE
7 UNIVERSITY?

8 A. I STARTED A CONSULTING FIRM.

9 Q. WHAT'S THE NAME OF YOUR CONSULTING COMPANY?

10 A. WILLIAM WECKER & ASSOCIATES, INCORPORATED.

11 Q. THAT'S WHAT YOU ARE STILL DOING TODAY?

12 A. THAT'S WHAT I DO TODAY. I RUN A CONSULTING
FIRM.

13 Q. WHAT IS THE NATURE OF THE TYPE OF WORK THAT
YOUR

14 COMPANY DOES?

15 A. STATISTICAL AND APPLIED MATHEMATICS WORK.

16 MY SON ASKED ME THAT ONCE. I SAID, "IT'S SORT
OF

17 LIKE DOING OTHER PEOPLE'S HOMEWORK. WHEN THEY HAVE A HARD
18 PROBLEM, A COMPANY OR A GOVERNMENT, THAT'S STATISTICAL IN
19 NATURE, THEY CALL US. WE SOLVE IT."

20 Q. AFTER YOU LEFT THE UNIVERSITY OF CALIFORNIA IN
21 1990 AND OPENED YOUR OWN CONSULTING COMPANY, HAVE YOU
22 CONTINUED TO DO SOME TEACHING AT THE UNIVERSITY LEVEL?

23 A. YES. NOT AS MUCH AS I USED TO WHEN IT WAS MY

24 FULL-TIME JOB, BUT I HAVE CONTINUED TO TEACH AND RESEARCH
AT
25 A LOWER LEVEL OF ACTIVITY.
26 I HAVE BEEN TEACHING AT STANFORD LATELY. I
ALSO
27 TAUGHT AT THE UNIVERSITY OF CHICAGO AND I WENT ONCE TO
28 CZECHOSLAVAKIA, TAUGHT AT THE CZECHOSLAVAKIA TECHNOLOGICAL

4540
1 INSTITUTE AFTER I LEFT UC DAVIS.
2 Q. DR. WECKER, I'M LOOKING AT YOUR CV. IT APPEARS
3 THAT ALSO YOU'VE PUBLISHED IN PEER-REVIEWED STATISTICAL
AND
4 MATHEMETICAL JOURNALS; IS THAT CORRECT?
5 A. THAT'S CORRECT.
6 Q. AND YOUR CV INDICATES YOU WERE EDITOR OF THE
7 JOURNAL OF THE AMERICAN STATISTICAL ASSOCIATION; IS THAT
8 CORRECT?
9 A. THAT'S CORRECT.
10 Q. WHAT IS THE JOURNAL OF THE AMERICAN STATISTICAL
11 ASSOCIATION?
12 A. FIRST, THE AMERICAN STATISTICAL ASSOCIATION IS
13 THE PROFESSIONAL ASSOCIATION OF THE UNITED STATES FOR
14 STATISTICIANS, JUST LIKE THE AMERICAN MEDICAL ASSOCIATION
IS
15 THE PROFESSIONAL ASSOCIATION FOR MEDICINE.

16 AND OUR ASSOCIATION PUBLISHES A NUMBER OF
17 PROFESSIONAL JOURNALS WHERE THE RESULTS OF RESEARCH GET
18 PUBLISHED.
19 AND THE FLAGSHIP JOURNAL, THE NO. 1 JOURNAL OF
20 THE PROFESSION IS THE JOURNAL OF THE AMERICAN STATISTICAL
21 ASSOCIATION. IT'S REALLY, I THINK, THE NO. 1 JOURNAL IN
THE
22 WHOLE WORLD.
23 Q. YOUR CV INDICATES THAT ARE YOU EDITOR ON THEORY
24 AND METHODS TYPE OF PUBLICATIONS.
25 WHAT DOES THAT MEAN?
26 A. WELL, FIRST, TO EXPLAIN THE EDITOR ROLE, THEY

27 OPERATE THE PEER-REVIEW PROCESS FOR THE JOURNAL.
28 LET'S SAY THAT YOU HAD A BRAND-NEW IDEA IN

4541
1 STATISTICS AND YOU WROTE IT DOWN IN A MANUSCRIPT AND YOU
2 WANTED TO HAVE IT PUBLISHED FOR THE WHOLE WORLD TO
3 UNDERSTAND.
4 AND YOU MIGHT -- IF YOU THOUGHT IT WAS REALLY
5 IMPORTANT, YOU MIGHT SEND IT TO THE JOURNAL OF THE
AMERICAN
6 STATISTICAL ASSOCIATION BECAUSE YOU KNEW, THERE, YOU'D
HAVE

7 THE MOST VISIBILITY.
8 THEN YOUR MANUSCRIPT MIGHT WELL LAND ON MY
DESK.
9 I'D LOOK AT IT, AND IF ON ITS FACE I THOUGHT IT WAS NOT
10 PUBLISHABLE, I'D JUST SEND IT BACK TO YOU WITH A POLITE
11 NOTE.
12 IF IT LOOKED LIKE A SERIOUS PAPER, THEN I WOULD
13 APPOINT REFEREES, USUALLY THREE OF THEM, THAT WERE
EXPERTS,
14 THE WORLD'S BEST EXPERTS I COULD FIND IN THE AREA YOU WERE
15 PUBLISHING.
16 I WOULD MAIL A COPY OUT TO ALL THOSE PEOPLE,
17 SOMETIMES IN THE UNITED STATES, SOMETIMES IN OTHER
18 COUNTRIES, AND THEY'D CHECK IT OVER CAREFULLY, AND WRITE A
19 REPORT AND SEND IT BACK TO ME AS THE EDITOR.
20 AND THEN, THESE ARE THE CRITERIA THAT I WOULD
21 APPLY FIRST. IT HAD TO BE RIGHT. BUT THAT WOULDN'T BE
22 ENOUGH. IT ALSO HAD TO BE NEW, BECAUSE IF IT WAS RIGHT
BUT
23 SOMEBODY ELSE DID IT ALREADY, THEN IT WOULDN'T GET
24 PUBLISHED. THAT'S NOT ENOUGH EITHER.
25 IT COULDN'T BE PUBLISHED ONLY IF IT WAS CORRECT
26 AND NEW. IT ALSO HAD TO BE IMPORTANT, A MAJOR
CONTRIBUTION
27 TO THE AREA. BECAUSE WE GET MANY, MANY MORE MANUSCRIPTS
28 THAN WE CAN POSSIBLY PUBLISH.

4542

1 BUT IF YOU WERE CORRECT AND BRAND-NEW AT YOUR
2 IDEA, AND IT WAS A REALLY IMPORTANT CONTRIBUTION, THEN
YOU'D

3 GET PAST THE EDITOR. YOU WOULD FIND YOURSELF A PUBLISHED
4 AUTHOR IN THE JOURNAL OF AMERICAN STATISTICAL ASSOCIATION.

5 Q. LET ME ASK YOU. IT SOUNDS TO ME LIKE YOU WERE
6 DESCRIBING THE ROLE OF AN EDITOR IN A GENERAL SENSE; IS
THAT

7 CORRECT?

8 WHAT I AM GETTING AT IS, I THINK THAT WHAT I
9 MEANT TO ASK YOU ALSO IS TO EXPLAIN TO US WHAT IS THE
NATURE

10 OF THE ARTICLES THAT YOU RECEIVED IN THE THEORIES AND
11 METHODS SECTION.

12 A. WELL, STATISTICAL THEORY AND METHODS --
13 THE COURT: GO AHEAD. I WAS JUST TRYING TO

GET

14 MR. FURR'S EYE.

15 MR. FURR: YES.

16 THE COURT: WHEN YOU GET TO A LOGICAL POINT,

WE

17 NEED TO TAKE A RECESS.

18 GO AHEAD AND ANSWER THE QUESTION.
19 THE WITNESS: THANK YOU, YOUR HONOR.
20 THE JOURNAL IS DIVIDED INTO TWO AREAS,
21 APPLICATIONS, AND THEORY AND METHODS. AND I WAS THE
THEORY
22 AND METHODS SIDE OF THE HOUSE.
23 AND IT'S -- THAT'S WHERE NEW STATISTICAL
METHODS
24 ARE DEVELOPED, MORE POWERFUL FORMULAS, BETTER WAYS OF
25 LOOKING AT THINGS, THE NEW IDEAS.
26 APPLICATIONS ARE ALSO IMPORTANT, BUT THAT WAS
--
27 ANOTHER EDITOR DID THAT.
28 MR. FURR: OKAY. THIS IS FINE, YOUR HONOR.

4543
1 THE COURT: OKAY, JURORS. PLEASE CONTINUE TO
2 FOLLOWING THE ADMONITION.
3 LET'S TAKE A 20-MINUTE RECESS UNTIL 20 AFTER
4 11:00. WE'LL SEE YOU BACK AT 20 AFTER 11:00.
5 (RECESS TAKEN FROM 11:00 TO 11:30 A.M.)
6 THE COURT: OKAY. WE ARE BACK ON THE RECORD
AND
7 READY TO GO, MR. FURR.
8 MR. FURR: THANK YOU, YOUR HONOR.
9 Q. DR. WECKER, LET'S GO BACK TO YOUR CV FOR JUST A

10 MOMENT.
11 I SEE THAT YOU SERVED ON THE NATIONAL ADVISORY
12 COUNCIL ON ENVIRONMENTAL POLICY AND TECHNOLOGY; IS THAT
13 CORRECT?
14 A. YES.
15 Q. WHAT TYPE OF WORK DID YOU DO ON THAT COMMITTEE?
16 A. I WORKED AS A STATISTICIAN ON THE COMMITTEE.
17 Q. WHAT WAS THE NATURE OF THE ISSUES THAT YOU WERE
18 WORKING ON?
19 A. WELL, PERHAPS A LITTLE BACKGROUND ON WHAT THE
20 COMMITTEE IS.
21 Q. PLEASE.
22 A. THIS IS A COMMITTEE ESTABLISHED BY ACT OF
23 CONGRESS THAT ADVISES THE UNITED STATES GOVERNMENT ON
24 MATTERS OF ENVIRONMENTAL POLICY.
25 AND WE LOOKED AT ALL DEPARTMENTS OF GOVERNMENT,
26 INCLUDING THE EPA, NOT JUST THE EPA. WE LOOKED AT THE
27 VARIOUS PROGRAMS, LIKE TRY TO GIVE RECOMMENDATIONS ON HOW
28 THEY WOULD BASICALLY BEST SPEND OUR TAX DOLLARS. IF THEY
4544
1 HAD AN EXTRA DOLLAR TO SPEND AND THEY WANTED TO USE IT TO
2 REDUCE POLLUTION, WHERE SHOULD THEY SPEND IT.

3 THAT'S THE WAY I LOOKED AT THE JOB.

4 Q. WERE YOU COMPENSATED FOR YOUR WORK ON THE
5 NATIONAL ADVISORY COUNCIL?

6 A. NO, I DO THAT KIND OF WORK AS A VOLUNTEER.

7 Q. WE MENTIONED A FEW MOMENTS AGO THAT YOU'VE ALSO
8 DONE SOME PUBLISHING IN PROFESSIONAL JOURNALS, INCLUDING
9 PEER-REVIEWED JOURNALS?

10 A. CORRECT.

11 Q. HAVE THOSE PUBLICATIONS BEEN IN THE FIELD OF
12 APPLICATION STATISTICS AND MATHEMATICS?

13 A. YES, MATHEMATICS AND STATISTICS.

14 Q. HOW MUCH OF YOUR TIME DO YOU CURRENTLY SPEND
15 CONDUCTING RESEARCH AND WRITING AND WORKING ON OTHER TYPES
16 OF MATTERS FOR WHICH YOU'RE NOT COMPENSATED BY ANY CLIENT?

17 A. OH, IF YOU COUNT IN REFEREEING PAPERS AS WELL,
18 IT'S ABOUT A THIRD OF MY TIME.

19 Q. YOU SPEND MOST OF YOUR TIME NOW WORKING AS A
20 CONSULTANT ON STATISTICAL PROBLEMS; CORRECT?

21 A. YES.

22 Q. LET'S TALK A LITTLE BIT ABOUT THE FIRM THAT YOU
23 HAVE FOUNDED AND THE NATURE OF THE TYPE OF CONSULTING THAT
24 YOUR FIRM DOES.

25 WOULD YOU GIVE THE JURY SOME EXAMPLES OF THE
26 TYPES OF COMPANIES THAT COME TO YOU FOR ADVICE, ANALYSIS,
27 TO
28 ANSWER ON STATISTICAL ISSUES.

A. IT'S JUST EVERY KIND THAT YOU COULD IMAGINE.

4545

1 AUTOMOBILE COMPANIES, AIRLINES, BANKS, RAILROADS, COMPUTER
2 COMPANIES, AEROSPACE COMPANIES, GOVERNMENTS.
3 JUST IF YOU NAME ONE, I IMAGINE WE'VE WORKED
WITH
4 THEM BEFORE.
5 Q. LET ME NAME A COUPLE AND ASK YOU TO EXPLAIN IN
A
6 LITTLE MORE DETAIL THE TYPE OF WORK YOU DID.
7 A. OKAY.
8 Q. YOU MENTIONED AIRLINES. WHAT TYPE OF
STATISTICAL
9 ISSUES DID YOU ASSIST THE AIRLINES IN ADDRESSING?
10 A. WELL, I HAVE WORKED ON SAFETY -- AIR SAFETY
11 ISSUES.
12 AND THEN I ALSO WORKED A LOT ON THE COMPUTER
13 RESERVATION SYSTEMS THAT ARE NOW QUITE WELL-KNOWN. WHEN
YOU
14 CALL UP FOR YOUR RESERVATION, WANT TO GO SOMEWHERE, THERE
IS
15 A BIG COMPUTER STANDING BEHIND THAT, KEEPING TRACK OF
16 EVERYTHING.
17 I WAS INVOLVED IN THE EARLY STAGES OF DESIGNING
18 ALL THAT.
19 Q. LET ME NAME ONE MORE. YOU ALSO MENTIONED YOU

20 WORKED FOR FOREIGN GOVERNMENTS.

21 YOU MENTIONED SPECIFICALLY WORKING FOR THE
22 CZECHOSLOVAKIAN GOVERNMENT; IS THAT CORRECT?

23 A. YES, BUT THAT MAY TAKE SOME EXPLANATION. I
24 DIDN'T SAY MUCH ABOUT THAT.

25 Q. WHY DON'T YOU EXPLAIN THE NATURE OF THE WORK
THAT
26 YOU DID FOR THE CZECH GOVERNMENT.

27 A. IT WAS A LITTLE DIFFERENT FROM MY REGULAR WORK,
28 WHAT I MENTIONED. I WAS ACTUALLY JUST INVITED TO TEACH AT

4546

1 THE CZECHOSLOVAKIA TECHNOLOGY UNIVERSITY ONE SEMESTER.

2 AND SO WE PACKED UP THE WHOLE FAMILY, MOVED
OVER

3 TO CZECHOSLOVAKIA. IT WAS QUITE EXCITING.

4 AND WHILE I WAS THERE, THE PERSON WHO LATER
5 BECAME THE PRESIDENT -- HE WAS A FINANCE MINISTER AT THE
6 TIME -- MR. VACLAV KLAUS, K-L-A-U-S, SENT A MESSAGE TO

COME
7 TO HIS OFFICE.

8 THE GIST OF IT WAS HE COULD USE SOME CONSULTING
9 HIMSELF ON THE ISSUES -- HE HAD MAINLY THE ISSUE OF
10 PRIVATIZING THE ECONOMY. AT THAT TIME, THIS WAS RIGHT

AFTER

11 THE BERLIN WALL CAME DOWN. CZECHOSLOVAKIA WAS TOTALLY A
12 COMMUNIST COUNTRY. EVERYTHING WAS OWNED BY THE STATE;
13 HARDLY ANY PRIVATE PROPERTY.

14 THE PROBLEM WAS HOW TO GET THE PROPERTY IN THE
15 HANDS OF INDIVIDUAL CITIZENS IN A WAY THAT WAS FAIR AND
16 SHARPIES DIDN'T TAKE ADVANTAGE. NOT AN EASY PROBLEM.

17 I WORKED ON THAT WITH HIM FOR SEVERAL MONTHS,
AND

18 RECRUITED A TEAM, INCLUDING TWO NOBEL PRIZE WINNERS, TO
HELP

19 WITH THE WORK. AND FINALLY, I GAVE I THINK GOOD COUNSEL
ON
20 THAT PROJECT.

21 Q. BASED ON THE LIST YOU GAVE US A FEW MINUTES
AGO,

22 IT SOUNDS LIKE THE TYPES OF CLIENTS THAT COME TO YOUR FIRM
23 FOR ASSISTANCE ON STATISTICAL ISSUES COVER A WIDE RANGE OF
24 INDUSTRIES AND COMPANIES; IS THAT CORRECT?

25 A. THAT IS TRUE.

26 Q. IS THERE SORT OF A UNIFYING PRINCIPLE IN WHAT
27 THESE COMPANIES COME TO YOU FOR?

28 IN OTHER WORDS, DOES YOUR COMPANY HAVE A

4547

1 SPECIALTY AREA IN THE FIELD OF STATISTICS THAT YOUR

CLIENTS

2 COME TO YOU FOR ASSISTANCE WITH?

3 A. WELL, THERE IS A COUPLE OF SPECIALTY AREAS, I
4 THINK THAT WE HAVE.

5 FIRST, BECAUSE WE'RE A PRODUCT OF THE
UNIVERSITY,

6 WE ARE A FAIRLY HIGH-POWERED GROUP, THEORETICALLY. SO IF
7 YOU HAVE A HARD PROBLEM THAT YOUR OWN RESEARCH GROUP JUST
8 CAN'T CRACK, THEN WE'RE LIKELY THE NUMBER YOU ARE GOING TO

9 CALL.

10 THERE'S ANOTHER FEATURE THAT I THINK SEEMS TO
BE

11 COMMON, AND THAT IS, IF YOU HAVE A HUGE DATABASE, BECAUSE
12 THEY PRESENT SPECIAL PROBLEMS, AND I SEE IT -- FOR
EXAMPLE,

13 IN THE AIRLINE CASE, WHERE YOU CAN IMAGINE THE VOLUME OF
14 ACTIVITY IN THE RESERVATION SYSTEM. THAT WAS THE REASON
15 THEY NEEDED HELP.

16 IF THEY WERE JUST ONE RESERVATION A DAY, THEY
17 WOULDN'T NEED MUCH MORE.

18 ANOTHER EXAMPLE, AND I THINK WILL
SATISFACTORILY

19 ANSWER YOUR QUESTION, WOULD BE THE RAILROADS, WHERE WE
20 WORKED ON THE MERGER OF THE SOUTHERN PACIFIC AND UNION

21 PACIFIC.
22 AND THEY HAD TO FIGURE OUT HOW ALL THE TRAFFIC
23 WOULD OPERATE AFTER THE RAILS WERE MERGED. MILLIONS OF
24 MILES AND MILLIONS OF TRAFFIC MOVEMENT.
25 SO A COMMON THREAD HERE THAT I SEE IS MASSIVE
26 DATABASES.
27 Q. LET ME ASK YOU ONE FOLLOW-UP QUESTION.
28 YOU ALSO SAID THAT WORKING ON HUGE OR MASSIVE

4548
1 DATABASES CAN PRESENT SPECIAL TYPES OF STATISTICAL
2 PROBLEMS.
3 COULD YOU EXPLAIN WHAT YOU MEAN BY THAT.
4 A. FOR EXAMPLE, IT REQUIRES SPECIALIZED EQUIPMENT,
5 AND NOT -- EVEN BIG COMPANIES MAY NOT HAVE THE RIGHT
6 EQUIPMENT TO HANDLE THIS SCIENTIFIC COMPUTING EQUIPMENT,
THE
7 KIND OF THING YOU FIND AT A UNIVERSITY.
8 BUT EVEN A BIG AIRLINE MAY NOT HAVE THIS SORT
OF
9 EQUIPMENT, SPECIALIZED SOFTWARE AND SO ON. AND I THINK IT
10 REQUIRES EXPERTISE, PEOPLE WHO DO THIS FOR A LIVING, AND
11 HAVE ADVANCED TRAINING IN HOW TO DO IT.
12 NOT EVERY COMPANY, EVEN LARGE COMPANIES, HAVE
13 THIS KIND OF PEOPLE.
14 Q. WHAT TYPES OF SPECIAL SCIENTIFIC COMPUTING

15 EQUIPMENT DOES YOUR FIRM USE TO ADDRESS THESE TYPES OF
16 MASSIVE DATABASES?
17 A. WE HAVE LOTS OF DIFFERENT EQUIPMENT, BUT THE
MAIN
18 ONE FOR THE BIG DATABASES IS IBM, CALLED A RISC SYSTEM
6000,
19 R-I-S-C. RISC IS A SCIENTIFIC COMPUTER.
20 YOU MAY RECALL A COUPLE OF YEARS AGO WHEN THERE
21 WAS A CHESS CONTEST BETWEEN A COMPUTER AND GARRY KASPAROV
22 AND THE IBM COMPUTER. THAT WAS THE KIND OF COMPUTER.
IT'S
23 THE SAME MODEL.
24 Q. THE COMPUTER WON?
25 A. NO. RISC SYSTEM 6000. THEY CALLED IT "BIG
BLUE"
26 OR SOMETHING LIKE THAT.

27 Q. YOU HAVE TESTIFIED IN THE PAST IN COURTROOMS AS
28 AN EXPERT IN STATISTICS, HAVEN'T YOU, DR. WECKER?

4549

1 A. YES, I HAVE.
2 Q. CAN YOU GIVE US AN ESTIMATION OF HOW MANY TIMES
3 YOU'VE TESTIFIED IN THE PAST.
4 A. OH, IN MAYBE OVER 20 YEARS, PROBABLY 20 TIMES.

5 Q. HAVE YOU ALSO TESTIFIED IN THE PAST AS A
6 COURT-APPOINTED EXPERT IN STATISTICS?
7 A. YES, I HAVE BEEN A COURT-APPOINTED EXPERT.
8 Q. AND COULD YOU DESCRIBE THE TYPE OF WORK YOU DID
9 AS A COURT-APPOINTED EXPERT IN STATISTICS.
10 A. YES. THAT'S A LITTLE UNUSUAL IN MY EXPERIENCE
AS
11 A COURT-APPOINTED EXPERT.
12 THIS WAS IN CALIFORNIA, A MATTER BETWEEN THE
BANK
13 OF AMERICA AND THE STATE OF CALIFORNIA, HAVING TO DO WITH
14 THE INDIVIDUAL BANK ACCOUNTS AT THE BANK OF AMERICA ALL
OVER
15 THE STATE, ALL THE WAY BACK INTO THE '40S. A HUGE
DATABASE
16 AGAIN, MESSY DATABASE.
17 AND THE ISSUE IS, IF SOMEONE DIES OR OTHERWISE
18 FORGETS ABOUT THEIR ACCOUNT, IT'S DORMANT, I'M NOT AN
EXPERT
19 IN THE LAW HERE, BUT THERE'S SOME LAW THAT SAYS THAT MONEY
20 GETS TO BE GIVEN OVER, CARETAKER STATUS, TO THE STATE OF
21 CALIFORNIA.
22 SO THERE WAS AN ISSUE OF WHETHER THAT HAS BEEN
23 DONE RIGHT. THE BANK HAD EXPERTS AND THE STATE HAD
EXPERTS
24 AND IT WAS COMPLICATED.

25 AND FINALLY, THE COURT DECIDED THAT THEY MIGHT
26 WANT THEIR OWN EXPERT TO HELP UNDERSTAND DIFFERENT
27 POSITIONS, AND THE THREE PARTIES SETTLED ON ME, THE BANK
AND
28 THE STATE AND THE JUDGE.

4550

1 Q. DR. WECKER, YOU'RE FAMILIAR WITH A DATABASE
KNOWN

2 AS THE AMERICAN CANCER SOCIETY'S CPS-II, CANCER PREVENTION
3 SURVEY II, I BELIEVE IT IS?

4 A. YES, I AM.

5 Q. (WRITING ON BOARD) IS THAT TYPICALLY
ABBREVIATED

6 AS CPS-II?

7 A. EITHER ONE. USUALLY NOT TOGETHER, WITH A
8 HYPHEN. IT'S USUALLY CPS-II OR ACS.

9 Q. HAVE YOU TESTIFIED IN THE PAST IN COURTROOMS ON
10 YOUR ANALYSES OF THE ACS CPS-II DATABASE?

11 A. YES, I HAVE ANALYZED THAT DATA BEFORE, AND I'VE
12 PRESENTED THE RESULTS OF MY ANALYSIS IN A COURTROOM
BEFORE.

13 Q. AND SPECIFICALLY, HAVE YOU TESTIFIED IN THE
PAST

14 ON SMOKING-ATTRIBUTABLE DEATH ESTIMATIONS BASED UPON THE
ACS

15 CPS-II DATABASE?
16 A. YES, I'VE DONE THAT.
17 Q. AND THAT TYPE OF TESTIMONY WAS GIVEN IN OTHER
18 TOBACCO-RELATED LITIGATION, WASN'T IT, SIR?
19 A. THAT'S RIGHT.
20 Q. OKAY. AND YOU WERE CALLED IN THOSE OTHER CASES
21 BY THE R.J. REYNOLDS TOBACCO COMPANY, JUST LIKE YOU ARE
22 BEING CALLED TODAY; CORRECT?
23 A. THAT'S RIGHT.
24 Q. AND YOU WERE COMPENSATED FOR THE ANALYSES THAT
25 YOU PERFORMED AND YOUR TIME IN PERFORMING THOSE ANALYSES
BY
26 R.J. REYNOLDS FOR YOUR WORK ON THE CPS-II DATABASE,
WEREN'T
27 YOU?
28 A. THAT'S RIGHT.

4551
1 Q. YOU ARE BEING COMPENSATED FOR THE TIME THAT YOU
2 SPENT PREPARING TO TESTIFY TODAY, AREN'T YOU, SIR?
3 A. THAT'S RIGHT.
4 Q. YOU BILL BY THE HOUR?
5 A. YES.
6 Q. WOULD YOU TELL THE JURY WHAT YOUR HOURLY RATE

7 IS.
8 A. MINE IS 395 AN HOUR FOR THIS WORK.
9 Q. OKAY. TELL THE JURY WHAT YOU DID TO PREPARE TO
10 TESTIFY TODAY.
11 A. WELL, I REVIEWED THE DATA THAT WE HAVE JUST
12 DISCUSSED, THE BIG AMERICAN CANCER SOCIETY DATABASE.
13 AND I REVIEWED THE LITERATURE ON THE
CALCULATIONS
14 OF WHAT IS CALLED ATTRIBUTABLE MORTALITY. AND I REVIEWED
15 THE LITERATURE ON VARIOUS RISK FACTOR INFORMATION FOR
16 MORTALITY, INCLUDING TOBACCO, ALSO INCLUDING NUMEROUS
17 OTHERS, LIKE LACK OF EXERCISE OR DIETS.
18 BY "DIET," I DON'T MEAN LOSING WEIGHT. I MEAN
19 WHAT YOU EAT, LIKE FRIED FOODS OR HIGH-FAT FOODS. THOSE
ARE
20 RISK FACTORS. AND OTHER RISK FACTORS. I REVIEWED THAT
21 LITERATURE.
22 Q. LET ME BE CLEAR HERE. YOU CONDUCTED YOUR OWN
23 ANALYSES ON THE CPS-II DATABASE; IS THAT CORRECT?
24 A. THAT'S RIGHT. WITH MY OWN COMPUTER AND MY OWN
25 ANALYSIS.
26 Q. AND YOU ALSO REVIEWED THE STATISTICAL
27 EPIDEMIOLOGIC LITERATURE TO IDENTIFY CERTAIN RISK FACTORS
28 THAT HAVE BEEN REPORTED TO BE LINKED WITH AN INCREASED
RISK

4552

1 OF MORTALITY OR DEATH; IS THAT CORRECT, SIR?

2 A. LINKED IN VERY A CAREFUL SENSE. STATISTICAL

3 ASSOCIATION, MEANING WHEN YOU FIND A HIGHER AMOUNT OF ONE

4 THING, LIKE FRIED FOODS, YOU TEND TO FIND A HIGHER
MORTALITY

5 IN THAT GROUP THAT'S DOING THE EATING OF FRIED FOODS.

6 Q. LET ME ASK YOU, AS A PRELIMINARY MATTER,

7 DR. WECKER: CAN STATISTICS ALONE BE USED TO PROVE THAT AN
8 EXPOSURE ACTUALLY CAUSED A DISEASE?

9 A. IT CAN'T PROVE CAUSE AND EFFECT WITH THE KIND
OF

10 DATA THAT WE ARE TALKING ABOUT HERE.

11 WE'RE VERY CAREFUL AS STATISTICIANS TO SAY THAT
12 IT SHOWS STATISTICAL ASSOCIATION THAT'S HELPFUL. IT'S NOT
13 LIKE IT'S NOT HELPFUL. IT CAN'T PROVE CAUSE AND EFFECT.

14 IT JUST MEANS THAT THERE'S MORE FRIED FOODS

BEING

15 EATEN BY A GROUP. AND IF THERE IS HIGHER MORTALITY, WE
16 REPORT THAT WAS A RISK FACTOR FOR MORTALITY.

17 Q. LET ME ASK YOU TO DEFINE A TERM FOR US.

18 ARE YOU FAMILIAR WITH AN EPIDEMIOLOGIC AND

19 STATISTICAL TERM KNOWN AS "CONFOUNDING"?

20 A. YES.

21 Q. (WRITING ON BOARD)
22 A. EPIDEMIOLOGIC AND STATISTICAL.
23 Q. WOULD YOU EXPLAIN TO US WHAT "CONFOUNDING" IS
IN
24 EPIDEMIOLOGIC OR STATISTICAL STUDIES.
25 MR. BROWN: OBJECTION. CALLS FOR AN OPINION
ON
26 AN AREA ON WHICH HE'S NOT QUALIFIED AND NO FOUNDATION.
27 THE COURT: OVERRULED.
28 THE WITNESS: "CONFOUNDING" IS A VERY

4553
1 FUNDAMENTAL STATISTICAL CONCEPT. LET ME EXPLAIN BY WAY OF
2 EXAMPLE RATHER THAN ABSTRACTLY.
3 IN THE EXAMPLE I WAS GIVING OF A GROUP THAT
MIGHT
4 EAT A LOT OF FRIED FOODS AND HAVE AN ELEVATED HEALTH
PROBLEM
5 IN CERTAIN AREAS OR ELEVATED MORTALITY DEATH RATE, WE CAN
6 REPORT THAT AS AN ASSOCIATION.
7 BUT WE WOULD RECOGNIZE THAT ALONG WITH THAT
COMES
8 WHAT WE CALL A CONFOUNDING PROBLEM, BECAUSE THERE ARE
OTHER
9 VARIABLES THAT HAVEN'T BEEN MENTIONED HERE SO FAR.
10 I SAID "FRIED FOODS" AND I SAID "DEATH RATE."

11 BUT WHAT IF IT TURNS OUT TO BE THE CASE THAT PEOPLE THAT
EAT
12 FRIED FOODS ALSO DON'T GET EXERCISE, OR DON'T HAVE OTHER
13 KINDS OF -- OR HAVE OTHER KINDS OF RISK FACTORS, LIKE LACK
14 OF SOCIAL SUPPORT IS ONE, AND MAYBE TOXIC EXPOSURES.
MAYBE
15 THEY WORK IN A FACTORY.
16 AND SO WHEN YOU JUST LOOK AT ONE FACTOR, LIKE
17 EATING FRIED FOODS, AND YOU NOTICE AN ELEVATED MORTALITY
18 RATE, WITH FURTHER STUDY YOU REALIZE THAT THERE IS A
19 CONFOUNDING PROBLEM GOING ON HERE.
20 IT COULD BE WRONG TO JUST SAY THAT THE FRIED

21 FOODS IS ALL THAT THERE IS TO UNDERSTAND HERE, BECAUSE
22 PROBABLY THE ELEVATED MORTALITY IS CONFOUNDED BY OTHER
23 FACTORS THAT ARE LYING THERE YET TO BE LOOKED AT.

24 Q. IS CONFOUNDING AN IMPORTANT STATISTICAL
PRINCIPLE

25 WITH RESPECT TO THE ANALYSES THAT YOU'RE PREPARED TO
PRESENT

26 HERE TODAY?

27 A. YES.

28 Q. I ASKED YOU TO ASSUME THAT DR. DAVIS TESTIFIED

4554

1 THAT SMOKING CAUSED 420,000 DEATHS PER YEAR IN THE UNITED
2 STATES.
3 DO YOU RECALL THAT?
4 A. YES.
5 MR. FURR: COULD I HAVE THE LIGHTS, PLEASE.
6 MR. BROWN: I'M GOING TO OBJECT, I THINK, TO
THE
7 NEXT QUESTION, BUT I'M NOT SURE. I'M JUST WAITING.
8 MR. FURR: OKAY. WELL, I'LL TRY TO AVOID THE
9 OBJECTION, BUT I DON'T KNOW WHAT IT IS.
10 Q. COULD YOU STEP DOWN, DR. WECKER.
11 LET ME ASK YOU TO TAKE A LOOK AT WHAT WAS
MARKED
12 PREVIOUSLY AS PLAINTIFFS' EXHIBIT 1804, WHICH I WILL
PROJECT
13 ON THE SCREEN.
14 MR. BROWN: COULD I SEE IT FOR ONE SECOND.
15 MR. FURR: Q. DR. WECKER, LET ME ASK YOU TO
16 ASSUME THAT THIS PLAINTIFFS' EXHIBIT 1804 IS THE EXHIBIT
17 THAT DR. DAVIS REFERENCED WHEN HE TESTIFIED WITH RESPECT
TO
18 HIS OPINION THAT 420,000 --
19 A. I SEE IT.
20 Q. IT'S NOT YOU I'M HELPING RIGHT NOW -- THAT
21 420,000 DEATHS WERE CAUSED IN THE UNITED STATES ON AN
ANNUAL

22 BASIS BY SMOKING. OKAY?
23 A. I UNDERSTAND.
24 Q. YOU SEE THESE LETTERS HERE IN THE BOTTOM CORNER
25 OF THIS EXHIBIT, "CDC"?
26 A. YES.
27 Q. DO YOU KNOW WHAT THE CDC IS?
28 A. YES.

4555

1 Q. WHAT IS "CDC"?
2 A. CENTER FOR DISEASE CONTROL. IT'S A GOVERNMENT
3 ORGANIZATION.
4 Q. DO YOU KNOW WHETHER THE CDC HAS PUBLISHED AN
5 ANALYSIS OF DEATHS ATTRIBUTABLE TO SMOKING IN WHICH THIS
6 420,000 FIGURE WAS PRESENTED?
7 A. YES, I KNOW THAT'S TRUE.
8 Q. ARE YOU FAMILIAR WITH THAT ANALYSIS?

9 A. YES, I HAVE IT HERE, IF YOU WANT.
10 Q. YOU HAVE REVIEWED IT, OBVIOUSLY?
11 A. YES.
12 Q. COULD I HAVE THE LIGHTS, PLEASE.
13 LET ME ASK YOU, DR. WECKER, DO YOU KNOW THE
14 DATABASE OR THE SOURCE OF THE INFORMATION THAT THE CDC
USED

15 TO CALCULATE THAT 420,000 ANNUAL DEATHS ESTIMATION?
16 A. YES, I KNOW THE SOURCE OF THE INFORMATION.
17 Q. AND WHAT WAS THE DATABASE USED BY THE CDC?
18 A. THE PRINCIPAL DATA MENTIONED EARLIER, THE
19 AMERICAN CANCER SOCIETY DATABASE KNOWN AS CPS-II.
20 Q. BEFORE WE GO ON, THE JURY HAS HEARD SOMETHING
21 ABOUT CPS-II, BUT LET ME ASK YOU TO REVIEW FOR US THE
NATURE
22 OF THE STUDY THAT WAS CONDUCTED BY THE AMERICAN CANCER
23 SOCIETY THAT WE REFER TO AS CPS-II.
24 A. OKAY. IT WAS A VERY LARGE STUDY, INVOLVING
MORE
25 THAN A MILLION PEOPLE. IT WAS NOT A RANDOM SAMPLE FROM
THE
26 UNITED STATES. IT HAS A DEFECT, BUT I'M NOT GOING TO BE
27 TALKING ABOUT THAT DEFECT TODAY, I DON'T BELIEVE.
28 IT WAS JUST VOLUNTEERS FROM, I BELIEVE, THE

4556

1 BOSTON AREA, SOMEWHERE ON THE EAST COAST.
2 AND THESE MILLION PEOPLE, MEN AND WOMEN, WERE
3 ASKED TO FILL OUT A QUESTIONNAIRE DESCRIBING ALL KINDS OF
4 THINGS THAT THE AMERICAN CANCER SOCIETY THOUGHT WAS
5 IMPORTANT TO KNOW, LIKE DIET AND EXERCISE. THERE WERE
6 SMOKING QUESTIONS AND SEVERAL OTHERS.
7 AND THEN, FOUR YEARS LATER, THE AMERICAN CANCER

8 SOCIETY DID A FOLLOW-UP SURVEY, AND THE IMPORTANT RESULT
IN
9 FOUR-YEAR FOLLOW-UP WAS WHO DIED.
10 AND THEN THEY WOULD RECORD ALL OF THAT. THEY
11 HAVE THE QUESTIONNAIRES, AND THEN THEY HAVE THE FOLLOW-UP
12 DEATH RESULTS.
13 AND THEN THE JOB OF THE STATISTICIAN IS TO SEE
14 WHAT RELATIONSHIPS THERE MIGHT BE.
15 Q. AND HAVE YOU PREPARED SOME EXHIBITS THAT WOULD
16 ASSIST YOU IN EXPLAINING TO THE JURY THE NATURE OF THE
17 INFORMATION THAT THE AMERICAN CANCER SOCIETY ACQUIRED FROM
18 THE 1 MILLION PARTICIPANTS IN THIS STUDY?
19 A. YES, I HAVE.
20 MR. FURR: YOUR HONOR, I'M GOING TO MARK AS
6274,
21 6275, 6276 AND 6277 FOUR CHARTS THAT ARE BLOWUPS OF THE
22 QUESTIONNAIRE USED BY THE AMERICAN CANCER SOCIETY.
23 (DOCUMENTS MORE PARTICULARLY
24 LISTED IN THE INDEX MARKED
25 FOR IDENTIFICATION DEFENDANTS'
26 EXHIBITS # 6274, 6275, 6276 AND 6277)

27 MR. BROWN: YOUR HONOR, I'M GOING TO OBJECT TO
28 SHOWING THIS TO THE JURY. THEY'RE HEARSAY.

4557

1 THE COURT: OKAY. DON'T SHOW IT TO THE JURY
2 YET. TURN IT AROUND.
3 THIS DOESN'T HAVE ANY INFORMATION ON IT. THIS
IS
4 MERELY THE FORM.
5 MR. BROWN: THE INFORMATION IS THE FORM. THE
6 INFORMATION IS THE QUESTION.
7 I'LL ALSO OBJECT ON 352. THIS IS HEARSAY.
IT'S
8 352 AS WELL.
9 I THINK MAYBE WE OUGHT TO HAVE A CONFERENCE IN
10 THE HALL, BECAUSE IT'S STARTING TO GET MORE COMPLICATED.
11 THE COURT: OKAY.
12 (COURT AND COUNSEL CONFER OUTSIDE
13 THE PRESENCE OF THE JURY)
14 THE COURT: I UNDERSTAND ON THAT CHART THAT
YOU
15 DON'T HAVE --
16 MR. BROWN: I WILL WITHDRAW MY OBJECTION.
17 COULD WE REMOVE THE OBSTRUCTION BETWEEN YOUR
18 HONOR AND MYSELF.
19 THE COURT: YES. YOU WANT TO SEE ME?
20 MR. BROWN: I DO. I MISSED YOU FOR A FEW
21 MINUTES WHILE IT WAS UP THERE.
22 THE COURT: LET ME ASK YOU: IS THERE

SOMETHING

23 WE CAN DO PRODUCTIVELY IN THE NEXT TWO OR THREE MINUTES?

24 IT'S CLOSE TO NOON.

25 MR. FURR: I BELIEVE THE RESPONSE TO THE NEXT
26 QUESTION WILL TAKE MORE THAN TWO OR THREE MINUTES.

27 THE COURT: WE BETTER BREAK FOR LUNCH. I DO
28 WANT TO GET IN A GOOD, LONG AFTERNOON THIS AFTERNOON WITH

4558

1 THE JURY, PLEASE.

2 LET'S TAKE A RECESS, JURORS, UNTIL 1:30.

PLEASE

3 CONTINUE TO FOLLOW THE ADMONITION. WE'LL SEE YOU BACK AT
4 1:30.

5 (LUNCH RECESS TAKEN AT 11:58 A.M.)

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4559

1 AFTERNOON SESSION 1:35

P.M.

2 MONDAY, FEBRUARY 28, 2000

3 THE COURT: GOOD AFTERNOON, EVERYBODY.

4 WE ARE BACK ON THE RECORD AND READY TO GO, MR.

5 FURR.

6 MR. FURR: THANK YOU, YOUR HONOR.

7

8 DIRECT EXAMINATION (CONTINUED)

9 BY MR. FURR: Q. DR. WECKER, BEFORE WE BROKE

10 FOR LUNCH, WE HAD BEGUN TALKING ABOUT THE MANNER IN WHICH
11 THE CPS-II STUDIES WAS CONDUCTED.
12 DO YOU RECALL THAT, SIR?
13 A. YES.
14 Q. AND I BELIEVE THAT YOU HAD ALREADY EXPLAINED TO
15 THE JURY THAT THE INFORMATION GATHERED FROM THE STUDY
16 SUBJECTS WAS GATHERED USING A QUESTIONNAIRE; IS THAT
17 CORRECT?
18 A. THAT'S RIGHT.
19 Q. AND WE HAD JUST GOT DONE MARKING THE FOUR-PAGE
--
20 I SHOULD SAY THE BLOWUP OF THE FOUR PAGES OF THE CPS-II
21 QUESTIONNAIRE; CORRECT?
22 A. YES.
23 Q. COULD YOU STEP DOWN AND USE THESE EXHIBITS TO
24 EXPLAIN TO THE JURY THE TYPE OF INFORMATION THAT WAS
25 GATHERED IN THE CPS STUDY.
26 A. YES.
27 MR. FURR: EXCUSE ME, DR. WECKER.
28 WITH THE COURT'S PERMISSION, MR. BROWN ASKED
THAT

4560

1 WE HOLD UP FOR A MINUTE, YOUR HONOR.
2 THE COURT: LET ME ASK, WAS THE FIRST NUMBER

3 6274? IS THAT THE FIRST ONE?
4 MR. FURR: CORRECT, YOUR HONOR.
5 Q. OKAY. DR. WECKER, COULD YOU EXPLAIN TO US THE
6 TYPES AND CATEGORIES OF INFORMATION THAT WERE OBTAINED ON
7 THE CPS-II STUDY.
8 A. YES. THIS IS THE FIRST PAGE OF THE
QUESTIONNAIRE
9 FOR WOMEN. THERE IS ANOTHER QUESTIONNAIRE FOR MEN.
10 IT'S MOSTLY THE SAME, BUT THERE'S SOME SPECIFIC
11 QUESTIONS FOR WOMEN ON THIS ONE, SO I'LL USE THIS ONE AS
AN
12 EXAMPLE.
13 WE ARE -- THERE WERE ABOUT A HALF A MILLION MEN
14 AND HALF A MILLION WOMEN FOR THE STUDY. YOU CAN SEE IT'S
15 THE AMERICAN CANCER SOCIETY'S CANCER PREVENTION STUDY NO.
16 2. THEY HAVE THE SHORT TERM CPS-II.
17 ON THIS FIRST PAGE -- I'M NOT GOING TO GO
THROUGH
18 ALL THE DETAILS, BUT JUST TO GIVE THE GENERAL IDEA, YOU
SEE
19 THAT THEY START WITH FAMILY HISTORY KIND OF QUESTIONS,
20 BECAUSE THOSE ARE ISSUES THAT THE AMERICAN CANCER SOCIETY
21 SEES FIT TO STUDY WHEN THEY'RE STUDYING CANCER.
22 MR. BROWN: YOUR HONOR, I MOVE TO STRIKE THAT,
23 THE OPINION OF WHAT THE AMERICAN CANCER SOCIETY SEES FIT

TO
24 STUDY.
25 THE COURT: YES, I AM GOING STRIKE THAT
26 REFERENCE, WHAT THE AMERICAN SOCIETY SEE FITS TO DO.
27 JUST AS A HOUSEKEEPING MATTER, WHILE WE ARE ON
28 THIS, YOU MADE AN OBJECTION BEFORE WE HAD A RECESS ON

4561
1 HEARSAY. AND I'M NOT SURE WHETHER I SHOULD RULE ON THAT.
2 MR. BROWN: NO. I WITHDREW IT, YOUR HONOR.
3 THE COURT: YOU WITHDREW IT.
4 GO AHEAD.
5 THE WITNESS: LET ME REPHRASE THAT.
6 THOSE ARE ITEMS THAT ARE ON THE AMERICAN CANCER
7 SOCIETY QUESTIONNAIRE.
8 THEN THERE'S ANOTHER SECTION HERE AT THE BOTTOM
9 HAVING TO DO WITH HISTORY OF DISEASES.
10 AND I WILL JUST MOVE ON TO THE SECOND PAGE,
WHICH
11 IS THIS ONE (INDICATING).
12 MR. FURR: Q. DR. WECKER, COULD YOU TELL US
13 THE NUMBER OF EACH EXHIBIT AS YOU GO THROUGH THEM, PLEASE.
14 A. THIS IS THE SECOND PAGE OF THE QUESTIONNAIRE,
NO.
15 6275.
16 THIS IS THE SECTION AT THE TOP OF 6275, THE

17 SECOND PAGE OF QUESTIONNAIRE ABOUT EXERCISE.
18 AND THEY WANT -- THEY INQUIRE IN THE
19 QUESTIONNAIRE WHETHER YOU GET NO EXERCISE AT ALL OR SLIGHT
20 OR MODERATE OR HEAVY. THAT'S AN EASY QUESTION. JUST
CHECK

21 THE BOX. AND THEN OTHER QUESTIONS ABOUT YOUR CURRENT
22 PHYSICAL CONDITION.
23 NEXT ARE QUESTIONS, SPECIAL QUESTIONS FOR THE
24 FEMALES, BECAUSE THIS IS A FEMALE QUESTIONNAIRE. AND OVER
25 IN THE BOTTOM ON THE RIGHT, THIS IS THE SMOKING QUESTIONS,
26 UNDER "HABITS." YOU CAN SEE THEY'RE ASKING ABOUT SMOKING
27 HISTORY, AGE BEGAN AND SO ON.
28 Q. THIS IS THE NEXT ONE?

4562

1 A. THE THIRD PAGE IS EXHIBIT 6276. AND THEY
FINISH
2 UP THE SMOKING QUESTIONS. THEY GET INTO DIET QUESTIONS.
3 AND THEY ARE QUESTIONS, VERY DETAILED QUESTIONS
4 ON DIET, BRUSSELS SPROUTS AND LEAFY GREEN VEGETABLES AND
5 VERY DETAILED QUESTIONS. A SPECIAL SECTION ON FRIED
FOODS,
6 AND SO ON WITH THE DIET QUESTIONS.
7 AND THEN VITAMINS AND MEDICATIONS THEY ASK

ABOUT

8 OVER HERE.
9 AND THEN FINALLY, THE LAST PAGE, WHICH IS 6277,
10 THEY GET INTO OCCUPATIONAL EXPOSURES, LIKE TOXIC, GASOLINE
11 EXHAUST AND WOOD DUST, THAT SORT OF THING.
12 AND THEN THE LAST SECTION HERE IS KIND OF --
THEY
13 CALL IT "MISCELLANEOUS," BUT IT'S GOT SEVERAL DIFFERENT
14 THINGS IN HERE.
15 BUT THE MAIN THING IN HERE IS WHAT'S CALLED
16 SOCIAL SUPPORT QUESTIONS, LIKE: "HOW MANY FRIENDS OR
17 RELATIVES DO YOU FEEL CLOSE TO? ARE YOU MARRIED? DO YOU
GO
18 TO CHURCH OR TEMPLE AND ATTEND CLUB MEETINGS?"
19 THIS IS A COLLECTION OF THINGS THAT ARE TERMED
IN
20 THE LITERATURE AS SOCIAL SUPPORT QUESTIONS. AND IT'S A
21 RECOGNIZED RISK FACTOR, IF PEOPLE HAVE LOTS OF SOCIAL
22 SUPPORT, THEY HAVE BETTER HEALTH AND MORTALITY.
23 THAT'S THE END. SO THERE'S NEARLY 400 ITEMS OF
24 INFORMATION THAT ARE THEN PUT INTO A COMPUTER.
25 AND THAT'S THE DATABASE THAT I'M REFERRING TO
26 WHEN I TALKED ABOUT THE CPS-II DATABASE.
27 Q. WHY DON'T YOU TAKE THE STAND AT LEAST FOR A FEW
28 MINUTES.

4563

1 LET'S SEE IF I UNDERSTAND, DR. WECKER. I
BELIEVE
2 YOU JUST TOLD US THAT MORE THAN 400 ITEMS OR PIECES OF
3 INFORMATION WAS OBTAINED FOR EACH INDIVIDUAL THAT FILLED
OUT
4 THE QUESTIONNAIRE; IS THAT CORRECT?
5 A. YES, I THINK THAT'S -- I HOPE I HAVE GOT RECALL
6 ON THAT. IT'S ABOUT 400 TOTAL ITEMS OF INFORMATION, AND
YOU
7 JUST SAW THEM. THOSE WERE ON THE ITEMS THAT WE JUST PUT
ON
8 THE QUESTIONNAIRE.

9 Q. YOU TOLD US EARLIER THAT THIS WAS A
QUESTIONNAIRE
10 ADMINISTERED TO AROUND A MILLION PEOPLE; IS THAT CORRECT?
11 A. MORE THAN A MILLION.
12 Q. SO YOU HAVE ABOUT 400 MILLION PIECES OF
13 INFORMATION COMING OUT OF THE STUDY; IS THAT CORRECT?
14 A. YES. WHEN YOU GET IT ON THE COMPUTER RECORDS,
15 IT'S OVER 400 MILLION ITEMS OF INFORMATION.
16 Q. AND DOES YOUR CONSULTING COMPANY POSSESS THE
DATA
17 TAPES THAT CONTAIN ALL OF THE RESPONSES PROVIDED BY THE 1

18 MILLION STUDY SUBJECTS IN THE CPS-II?
19 A. YES, WE HAVE THOSE DATA TAPES.
20 Q. WHEN DID YOU OBTAIN THOSE DATA TAPES?
21 A. ABOUT 10 YEARS AGO.
22 Q. NOW, YOU TOLD US EARLIER THAT YOU HAVE
CONDUCTED
23 ANALYSES USING THOSE DATA TAPES; IS THAT CORRECT?
24 A. YES.
25 Q. BY THE WAY, YOU WERE DEPOSED IN THIS CASE; IS
26 THAT CORRECT?
27 A. THAT'S CORRECT.
28 Q. YOU WERE DEPOSED BY A LAWYER NAMED MR. WILNER;
IS

4564

1 THAT RIGHT?
2 A. YES.
3 Q. AND IS IT ALSO TRUE THAT YOU HAVE PREVIOUSLY
4 PROVIDED COPIES OF THOSE DATA TAPES TO MR. WILNER AT HIS
5 REQUEST SO THAT HE WOULD HAVE ACCESS TO THE DATA ALSO?
6 A. THAT'S CORRECT. THE DATA TAPES AND THE
7 DOCUMENTATION THAT COMES WITH THEM FROM THE AMERICAN
CANCER
8 SOCIETY.
9 Q. WHAT DO YOU MEAN BY THE "DOCUMENTATION THAT
COMES

10 WITH THE DATA"?
11 A. WELL, THERE IS A GREAT THICK BOOK. FOR THOSE
12 FAMILIAR WITH COMPUTER DATABASES, IT HAS RECORD LAYOUTS,
13 VARIABLE NAMES, THE THINGS YOU NEED IN ORDER TO MAKE GOOD
14 USE OF THE COMPUTER DATABASE.
15 Q. IS THIS BOOK SORT OF A ROADMAP TO THE
INFORMATION
16 CONTAINED ON THE DATA TAPES?
17 A. YES. IT'S LIKE A ROADMAP.
18 Q. LET ME BACK UP. YOU TOLD US YOU GOT THE DATA
19 ABOUT 10 YEARS AGO. WHAT DID YOU DO FIRST WITH THE DATA
20 TAPE WHEN YOU RECEIVED IT 10 YEARS AGO?
21 A. WELL, THE FIRST THING I DID IS THE THING I
ALWAYS
22 DO FIRST WHEN I GET A DATABASE. I CHECK IT FOR ACCURACY,
23 AND ANYTHING THAT MIGHT BE UNUSUAL, THAT NEEDS TO BE
LOOKED
24 INTO. THERE ARE QUESTIONS IN HERE ABOUT YOUR HEIGHT AND
25 WEIGHT. AND SO I QUICKLY GO THROUGH AND FIND IF THERE'S
26 ANYBODY 20 FEET TALL, 700 POUNDS, SOMETHING THAT DOESN'T

27 MAKE SENSE.
28 AND THAT'S EASY TO HAPPEN IN A DATABASE,
BECAUSE

4565

1 SOMEBODY HAD TO KEYPUNCH IN THE INFORMATION AND MAYBE THEY
2 MADE A MISTAKE. SO I CHECK ALL THE VARIABLES FOR
3 REASONABLENESS.

4 AND I ALSO CHECK FOR DUPLICATES. THAT'S,
AGAIN,

5 SOMETHING COMMON. WE HAVE ALL RECEIVED TWO CATALOGS FROM
6 THE SAME COMPANY. WE ARE IN THE DATABASE TWICE. SO I

CHECK

7 FOR DUPLICATES.

8 AT THE END OF THAT, I BASICALLY DISCOVERED THIS
9 WAS A GOOD QUALITY DATABASE WITH ESSENTIALLY NO PROBLEMS.

10 Q. DID YOU ALSO USE THE DATA TO DETERMINE WHETHER
OR

11 NOT YOU COULD REPLICATE THE RESULTS OF STUDIES THAT HAD
BEEN

12 PUBLISHED ON THAT DATA SET?

13 A. YES. THAT WAS THE NEXT THING TO VERIFY, THAT
IT

14 REPLICATED THE DATA I THOUGHT I HAD.

15 I WENT TO PUBLISHED ARTICLES THAT HAD USED THE
16 SAME DATA, MAINLY THE GOVERNMENT ARTICLES. AND THEN I
17 APPLIED THE SAME PROCEDURES AND MADE SURE I CAME OUT WITH
18 THE SAME ANSWER.

19 AND SURE ENOUGH, IT REPLICATES THE RESULTS OF
20 OTHERS, AND THAT GAVE ME CONFIDENCE THAT I HAVEN'T MADE A

21 MISTAKE HERE. I REALLY HAVE WHAT I THINK I HAVE, WHICH IS
22 THE AMERICAN CANCER SOCIETY DATA.
23 Q. YOU MENTIONED A MOMENT AGO ABOUT RECEIVING TWO
24 CATALOGS, HOW SOMETIMES THINGS ARE DUPLICATED.
25 DID YOU DETERMINE WHETHER OR NOT THERE WAS ANY
26 DUPLICATION WITHIN THE CPS-II DATA SET?
27 A. I FOUND ONE DUPLICATE. I INFORMED THE AMERICAN
28 CANCER SOCIETY ABOUT THAT AND THEY TOOK IT OUT.

4566

1 Q. OF THE MILLION PEOPLE THAT COMPLETED THE
2 QUESTIONNAIRE, AS YOU INDICATED, WHO ANSWERED
APPROXIMATELY
3 400 QUESTIONS, DID ANY TWO OF THOSE MILLION PEOPLE
COMPLETE
4 THE QUESTIONNAIRE IN EXACTLY THE SAME WAY?
5 A. NO. THAT WAS INTERESTING. EVEN LEAVING ASIDE
6 THE OBVIOUS THINGS, LIKE SOCIAL SECURITY NUMBER, THINGS
THAT
7 WOULD BE UNIQUE, BUT JUST LOOKING AT THE SUBSTANTIVE
8 QUESTIONS LIKE DIET AND EXERCISE, THERE WERE NO -- NO TWO
9 PEOPLE OUT THE MILLION THAT HAD IDENTICAL BACKGROUNDS AND
10 HABITS IN TERMS OF FAMILY HISTORY OR DIET OR EXERCISE.
11 EVERYONE HAD THEIR OWN INDIVIDUAL CHOICES.
12 Q. EARLIER, I PUT UP PLAINTIFFS' EXHIBIT 1804, AND
13 WE LOOKED AT THE CHART THAT DR. DAVIS HAD USED THAT HAD

THE

14 CDC SMOKING ATTRIBUTABLE MORTALITY ESTIMATE OF 420,000

15 PEOPLE ON IT.

16 DO YOU RECALL THAT?

17 A. YES, I DO.

18 Q. ARE YOU FAMILIAR WITH THE STATISTICAL
METHODOLOGY

19 THAT IS USED TO MAKE THAT CALCULATION?

20 A. YES.

21 Q. HAVE YOU PREPARED A CHART THAT WOULD HELP YOU
22 EXPLAIN HOW THAT CALCULATION IS MADE TO THE JURY?

23 A. YES, I HAVE.

24 MR. FURR: WOULD YOU STEP DOWN AGAIN, PLEASE.

25 LET ME ASK YOU TO USE CHART THAT WE MARKED AS

26 6278, ENTITLED "ILLUSTRATION OF 'ATTRIBUTABLE' DEATHS

27 CALCULATION" TO EXPLAIN HOW THAT CALCULATION IS MADE.

28 (DOCUMENT MORE PARTICULARLY

4567

1 LISTED IN THE INDEX MARKED

2 FOR IDENTIFICATION DEFENDANTS'

3 EXHIBIT # 6278)

4 THE WITNESS: OKAY. IT'S VERY EASY TO
EXPLAIN,

5 BUT COMPLICATED TO DO IN PRACTICE, BECAUSE THERE IS A
6 MILLION THINGS TO DO.
7 SO I MADE A SIMPLE EXAMPLE WITH ONLY 100
8 NONSMOKERS AND 100 CURRENT SMOKERS. AND I'M GOING TO
9 ILLUSTRATE THE CALCULATION ON THIS SMALL ILLUSTRATION.
THIS
10 IS NOT REAL DATA. THIS IS JUST TO SHOW HOW IT WORKS.
11 SO WE HAVE GOT 200 PEOPLE, AND WE HAVE GOT THEM
12 INTO TWO GROUPS, THE SMOKERS AND THE NONSMOKERS.
13 AND THEN WE WATCH FOR FOUR YEARS AND WE COME
BACK
14 AND FOLLOW UP AND WE FIND OUT WHO DIED.
15 AND SUPPOSE THE RED DOTS THAT I HAVE COLORED IN
16 HERE ARE THE DEATHS. SO IN THE NEVER-SMOKER GROUP, 1, 2
3,
17 4 DEATHS.
18 AND IN THEN IN THE GROUP OF SMOKERS, THERE WERE
19 MORE DEATHS, 1, 2, 3, 4, 5, 6, 7, 8. SO THERE WERE MORE
20 DEATHS AMONG THE SMOKERS.
21 AND THE ATTRIBUTABLE DEATHS CALCULATION IS
22 NOTHING MORE THAN HOW MANY EXTRA DEATHS THERE ARE IN THE
23 SMOKING POPULATION. THERE WERE EIGHT OVER HERE IN THE
24 SMOKERS, FOUR IN THE NONSMOKERS (INDICATING). EIGHT MINUS
25 FOUR IS FOUR. FOUR EXTRA ONES OVER HERE AND THAT'S IT.
26 THE 400 MILLION CALCULATION IS NOTHING MORE.
27 IT'S A CORE ON JUST THAT CALCULATION.

28 MR. FURR: Q. OKAY. WHEN YOU HAVE 1 MILLION

4568

1 STUDY SUBJECTS PARTICIPATING INSTEAD OF 200, IS YOUR
FORMULA

2 THAT YOU USE, INSTEAD OF ATTEMPTING TO CALCULATE -- EXCUSE

3 ME -- COUNT THE DOTS BY HAND --

4 A. OF COURSE. THE DOTS WERE TO HELP EXPLAIN

5 THINGS. THE COMPUTER DOESN'T KNOW HOW TO LOOK AT DOTS.

SO

6 THERE'S A BIT OF ARITHMETIC IN THE FORM OF A FORMULA THAT

7 THE COMPUTER KNOWS. AND WHEN THE COMPUTER APPLIES THE

8 FORMULA -- THIS IS AN IMPORTANT POINT -- IT GETS EXACTLY

9 WHAT WE GET, FOUR.

10 IT ISN'T A DIFFERENT ANSWER. IT'S ALWAYS GOING

11 TO BE THE SAME AS I JUST SHOWED IT. JUST, OF COURSE, IT

12 DOESN'T COUNT DOTS. IT USES A FORMULA.

13 MR. FURR: LET ME ASK YOU TO USE WHAT WE

MARKED

14 AS DEFENDANTS' EXHIBIT 6279.

15 (DOCUMENT MORE PARTICULARLY

16 LISTED IN THE INDEX MARKED

17 FOR IDENTIFICATION DEFENDANTS'

18 EXHIBIT # 6279)

19 MR. FURR: Q. I ASK YOU TO EXPLAIN TO THE
JURY
20 THE FORMULA THAT IS USED TO CALCULATE ATTRIBUTABLE DEATHS
21 MORTALITY FROM THE CPS-II.
22 THE COURT: WHAT IS THE TITLE OF 6279?
23 MR. FURR: IT'S ALSO TITLED "ILLUSTRATION OF
24 'ATTRIBUTABLE' DEATHS CALCULATION," BUT THIS IS THE CHART
25 THAT HAS THE FORMULA ON THE BOTTOM.
26 THE COURT: OKAY.
27 THE WITNESS: OKAY. THIS SAME CHART, WHERE WE
28 WERE EASILY ABLE TO COUNT THAT, THERE WERE FOUR EXTRA
DEATHS

4569

1 IN THE SMOKER GROUP.
2 I'M NOT GOING TO DO THE SAME CALCULATIONS THE
WAY
3 THE COMPUTER DOES DO IT. WHAT THE COMPUTER DOES IS FIRST
4 CALCULATE UP THE PERCENT OF THE DEATH RATE. THERE'S FOUR
5 OUT OF 100 IN THE NONSMOKER GROUP. THAT'S 4 PERCENT.
6 AND THEN IT WILL CALCULATE THE PERCENT OF THE
7 DEATH RATE IN THE SMOKER GROUP, AND IT GETS 8 PERCENT.
8 AND THEN, IN A WAY THAT SEEMS MORE COMPLICATED
9 THAN NECESSARY, BECAUSE AS HUMAN BEINGS WE CAN COUNT THE
10 DOTS AND THE COMPUTER CAN'T, IT THEN GOES THROUGH THIS
11 RATHER LONG ARITHMETIC. IT TAKES THE DEATH RATE, 8

PERCENT,
12 AND DIVIDES IT BY THE 4 PERCENT. THAT'S CALLED A RELATIVE
13 RISK, A RELATIVE RISK OF TWO. 8 PERCENT IS TWICE AS BIG
AS
14 4 PERCENT THAT GOES IN HERE, WHERE IT'S WRITTEN RELATIVE
15 RISK, TWO.
16 THEN IT FIGURES OUT HOW MANY SMOKERS THERE ARE
17 COMPARED TO THE TOTAL. IN THIS CASE, I HAVE GOT 100
SMOKERS
18 OUT OF 200 TOTAL PEOPLE. SO IT PUTS 100 DIVIDED BY 200.
19 THAT'S THE SMOKING PROPORTION, SOMETIMES CALLED THE
20 PREVALENCY OF SMOKING. BUT IN EVERYDAY LANGUAGE, IT'S
JUST

21 THE PROPORTION OF SMOKERS.
22 AND THEN IT COUNTS UP THE TOTAL NUMBER OF
DEATHS
23 IN SMOKERS AND NONSMOKERS COMBINED. THERE WERE 12 TOTAL,
24 FOUR OVER HERE AND EIGHT OVER HERE. AND IT PUTS THE
NUMBER
25 12 HERE.
26 IT GOES THROUGH THIS COMPLICATED ARITHMETIC
THAT
27 SEEMS, I MUST ADMIT, ON ITS FACE TO SEEM LIKE MORE THAN IS
28 NECESSARY, BUT THE COMPUTER CAN DO THIS KIND OF WORK VERY

4570

1 FAST. SO THAT'S THE WAY WE DO IT.
2 AND SURE ENOUGH, IT DOES ALL THAT ARITHMETIC,
AND
3 IT GETS A FOUR, EXACTLY THE SAME AS IF YOU COUNTED THEM BY
4 EYE.
5 Q. OKAY. I WANT TO MAKE SURE WE ALL UNDERSTAND
6 SOMETHING.
7 THIS ATTRIBUTABLE DEATHS CALCULATION IS A
8 STATISTICAL CALCULATION, ISN'T IT?
9 A. YES, IT'S A STATISTICAL FORMULA.
10 Q. AND THIS IS THE FORMULA THAT THE CDC AND OTHERS
11 HAVE USED TO CALCULATE SMOKING-ATTRIBUTABLE MORTALITY; IS
12 THAT CORRECT?
13 A. FOR SMOKING-ATTRIBUTABLE MORTALITY AND OTHER
14 KINDS OF MORTALITY. IT'S USED FOR VARIOUS RISK FACTORS,
15 INCLUDING SMOKING.
16 Q. HAVE A SEAT AGAIN, PLEASE.
17 WHEN THE CDC CALCULATED SMOKING-ATTRIBUTABLE
18 MORTALITY, DID THE CDC ACTUALLY GO OUT AND REVIEW AUTOPSY
19 REPORTS OR DEATH CERTIFICATES RELATED TO THE STUDY
SUBJECTS?
20 A. NO, NOT AT ALL.
21 THEY SIMPLY APPLIED THE FORMULA THAT I SHOWED,
22 WHICH HAS THE RESULT OF TELLING US HOW MANY MORE DEATHS

23 THERE ARE IN THE SMOKING POPULATION WHEN COMPARED TO THE
24 NONSMOKING POPULATION.
25 Q. WHEN THE CDC CALCULATED THIS
SMOKING-ATTRIBUTABLE
26 MORTALITY ESTIMATE, DID THE CDC ACTUALLY GO OUT AND REVIEW
27 MEDICAL RECORDS AND TALK TO THE DOCTORS OF THE
PARTICIPANTS
28 OF THE STUDY THAT HAD DIED IN THE INTERVENING FOUR YEARS?

4571

1 A. NO. IT'S JUST BASED ON THE QUESTIONNAIRE
2 RESULTS, ON THE FOLLOW-UP, AND THE FORMULA.
3 Q. LET ME ASK YOU ABOUT THIS FORMULA THAT YOU JUST
4 SHOWED US.
5 DO YOU KNOW WHO INVENTED THAT FORMULA?
6 A. YES.
7 Q. AND WHO IS THAT?
8 A. HIS NAME WAS MORTON LEVIN. HE PUBLISHED AN

9 ARTICLE IN 1953 WHERE HE DEVELOPED THAT FORMULA.
10 THE COURT: COULD I SEE WHAT YOU JUST SHOWED
THE
11 JURY?
12 MR. FURR: YES. IT WAS THE LAST CHART, YOUR
13 HONOR, 6279.

14 THE COURT: OKAY. I THOUGHT IT WAS A NEW
CHART.
15 MR. FURR: Q. AND THAT FORMULA WAS DEVELOPED
16 BY A MAN NAMED LEVIN?
17 A. YES.
18 Q. (WRITING ON BOARD)
19 WHEN WAS IT PUBLISHED?
20 A. 1953.
21 Q. HAVE YOU REVIEWED MR. LEVIN'S PUBLICATIONS
22 RELATED TO THE DEVELOPMENT OF THAT FORMULA?
23 A. YES. I'VE GOT IT HERE, IF YOU WANT.
24 Q. YOU'VE GOT IT HERE WITH YOU. MR. BROWN MAY
WANT
25 TO ASK YOU SOME QUESTIONS ABOUT IT, SO KEEP IT UP THERE.
26 IS THERE ANYTHING INHERENTLY WRONG WITH --
27 INACCURATE FROM A STATISTICAL PERSPECTIVE IN USING THE
28 FORMULA DEVELOPED BY MR. LEVIN TO CALCULATE

4572
1 SMOKING-ATTRIBUTABLE MORTALITY?
2 A. WELL, THAT'S A MORE COMPLICATED QUESTION THAN
YOU
3 MAY REALIZE. SO LET ME SPEAK TO THE FIRST PART OF YOUR
4 QUESTION ABOUT ANYTHING WRONG WITH THE FORMULA, THAT PART.
5 Q. OKAY.
6 A. AND THEN, IF YOU COULD ASK MAYBE ANOTHER

QUESTION

7 ABOUT THE USE OF THE FORMULA, BECAUSE IT'S -- THERE'S A
8 DISTINCTION THAT'S IMPORTANT.

9 AS TO THE CORRECTNESS OF THE FORMULA, THERE IS
10 NOTHING WRONG WITH THE FORMULA. IT'S A PERFECTLY GOOD
11 FORMULA. OKAY?

12 BUT JUST LIKE ANY FORMULA, IT CAN BE MISUSED.
13 AND SO YOU COULD MAKE A PERFECTLY CORRECT FORMULA, USE IT
14 IMPROPERLY AND GET A WRONG ANSWER.

15 BUT YOU CAN'T BLAME THIS ON THE FORMULA. YOU
16 HAVE TO BLAME THAT ON YOURSELF, FOR USING IT IN A WAY YOU
17 SHOULDN'T.

18 Q. ARE THERE CONDITIONS UNDER WHICH IT WOULD BE
19 INAPPROPRIATE TO USE THE LEVIN FORMULA TO CALCULATE -- TO
20 MAKE ATTRIBUTABLE MORTALITY CALCULATIONS?

21 MR. BROWN: OBJECTION. FOUNDATION AND
22 QUALIFICATION.

23 THE COURT: ARE YOU GIVING THIS ANSWER FROM A
24 STATISTICAL AS OPPOSED TO ANY KIND OF A MEDICAL JUDGMENT
OR
25 CONCLUSION?

26 THE WITNESS: A STATISTICAL PERSPECTIVE, YOUR

27 HONOR, EXCLUSIVELY.

28 THE COURT: I'M GOING TO ALLOW THE ANSWER,

THEN.

4573

1 THE WITNESS: YES. THERE ARE LIMITATIONS ON
THE

2 PROPER USE OF THE FORMULA.

3 AND THEY'RE DISCUSSED BY LEVIN IN THE SAME
4 ARTICLE WHERE HE FIRST WROTE DOWN THE FORMULA.

5 MR. FURR: Q. AND HAS THE SURGEON GENERAL
ALSO

6 DISCUSSED LIMITATIONS UPON THE USE OF THE LEVIN FORMULA TO
7 MAKE ATTRIBUTABLE MORTALITY CALCULATIONS?

8 MR. BROWN: OBJECTION. HEARSAY.

9 THE COURT: SUSTAINED.

10 MR. FURR: Q. HAVE YOU REVIEWED THE 1996
11 SURGEON GENERAL'S REPORT?

12 A. YES. THAT'S THE ONE ON EXERCISE.

13 MR. BROWN: I'M SORRY. I COULDN'T HEAR THE
14 YEAR.

15 MR. FURR: 1996.

16 Q. AND IS YOUR OPINION ABOUT THE CONDITIONS UNDER
17 WHICH THE LEVIN FORMULA CAN BE USED APPROPRIATELY TO MAKE
18 ATTRIBUTABLE MORTALITY CALCULATIONS BASED, IN PART, ON THE
19 1996 SURGEON GENERAL'S REPORT?

20 MR. BROWN: SAME OBJECTION.

21 THE COURT: NO, HE IS NOT ASKING HIM THE

22 CONTENT. HE IS JUST SAYING -- HE'S JUST ASKING HIM IF HE
23 BASES IT, IN PART, ON THAT REPORT.
24 HE'S NOT ASKING HIM FOR THE SUBSTANCE OF THE
25 REPORT. HE'S ASKING HIM FOR WHETHER HE RELIES ON THAT
26 REPORT.
27 AN EXPERT WITNESS IS ALLOWED TO STATE THE BASIS
28 FOR HIS OPINION WITHOUT GIVING YOU, ON DIRECT EXAMINATION,

4574
1 THE CONTENT.
2 THAT'S ALL HE'S ASKING. I'M GOING TO OVERRULE.
3 THE WITNESS: YES. THAT'S ONE OF THE BASES
THAT
4 I HAVE REVIEWED.
5 THE COURT: DON'T TELL US THE CONTENT. YOU
CAN
6 TELL US, IN GENERAL, WHAT SUBJECT IS CONSIDERED, BUT DON'T
7 TELL US THE CONTENT OF ANYTHING IN IT ON THIS QUESTION,
8 PLEASE.
9 THE WITNESS: I HOPE I UNDERSTAND.
10 THE COURT: I DIDN'T SAY THAT YOU WERE GOING
TO,
11 BUT I DIDN'T KNOW WHETHER YOU KNEW WHAT THE LIMITATIONS
WERE
12 HERE.
13 THE WITNESS: I'M NOT SURE I DO, BUT I'LL TRY

MY

14 BEST.

15 THE COURT: OKAY.

16 THE WITNESS: THE SURGEON GENERAL REPORT ON
17 PHYSICAL ACTIVITY AND HEALTH THAT I HAVE WITH ME DISCUSSES
18 THE LIMITATIONS ON THE USE OF THIS FORMULA --

19 MR. BROWN: OBJECTION. MOVE TO STRIKE.
20 HEARSAY.

21 THE WITNESS: -- THAT I MENTIONED.

22 MR. BROWN: I DON'T THINK THE WITNESS
23 UNDERSTANDS.

24 MR. FURR: MAY I BE HEARD?

25 THE COURT: GO AHEAD.

26 MR. FURR: I THINK THE WITNESS DID STAY WITHIN
27 THE BOUNDS OF YOUR HONOR'S RULING.

28 THE COURT: I THINK SO. I'M GOING TO LEAVE IT

4575

1 IN THE RECORD.

2 YOU CAN CROSS ON IT, IF YOU WANT, MR. BROWN. I
3 THINK THAT THAT DIDN'T GET INTO THE CONTENT OF IT.

4 MR. FURR: Q. OKAY, DR. WECKER. BASED UPON
5 THE WORK OF MR. LEVIN, THE SURGEON GENERAL, AND YOUR
6 EXPERIENCE, TRAINING, EDUCATION AS A STATISTICIAN, DO YOU

7 HAVE AN OPINION WITH RESPECT TO THE CONDITIONS UNDER WHICH
8 IT IS PROPER TO USE THE LEVIN FORMULA TO MAKE ATTRIBUTABLE
9 MORTALITY CALCULATIONS?

10 A. YES.

11 MR. BROWN: OBJECTION. QUALIFICATIONS,
12 FOUNDATION, 352. AND I THINK IT CALLS FOR A MEDICAL
13 OPINION.

14 THE COURT: I'M GOING TO OVERRULE ALL OF THAT,
15 AND I HAVE DONE THE 352 WEIGHING.

16 BUT IT'S WITHOUT PREJUDICE TO YOUR MOVING TO
17 STRIKE THE ANSWER.

18 LET'S WAIT AND SEE WHAT THE ANSWER IS. I DON'T
19 THINK IT NECESSARILY CALLS FOR A MEDICAL OPINION. AND I
20 THINK THIS WITNESS HAS MADE IT CLEAR THAT HE HAS NO CLAIMS
21 TO EXPERT STATUS IN MEDICAL MATTERS AND THAT HE WON'T BE
22 GIVING US ANY MEDICAL OPINIONS.

23 SO HAVING HEARD ALL OF THAT, I'M GOING TO LET
HIM
24 ANSWER THIS QUESTION.

25 THE WITNESS: I'M NOT SURE I UNDERSTAND. I
26 BELIEVE YOU'RE ASKING ME IF I HAVE AN OPINION OR IF I KNOW
27 WHAT THE CONDITIONS ARE THAT ARE NECESSARY FOR THE PROPER
28 APPLICATION OF THE LEVIN FORMULA.

4576

1 MR. FURR: Q. THAT'S CORRECT.

2 A. YES, I KNOW THAT.

3 Q. CAN YOU EXPLAIN TO THE JURY WHAT THOSE
CONDITIONS
4 ARE.

5 A. YES. THE CONDITIONS ARE THAT, WHEN YOU COMPARE
6 TWO GROUPS WITH THE LEVIN FORMULA, THAT THERE CAN BE NO
7 OTHER DIFFERENCES BETWEEN THE TWO GROUPS OTHER THAN THE

ONE
8 DIFFERENCE WHICH DEFINES THE TWO GROUPS YOU'RE COMPARING,
9 SMOKERS AND NONSMOKERS.

10 IT HAS TO BE THE CASE, TO GET A CORRECT RESULT
11 FROM THE LEVIN FORMULA, THAT WHEN IT COMES TO DIET OR
12 EXERCISE OR TOXIC EXPOSURE OR ANY ONE OF A NUMBER OF RISK
13 FACTORS, THAT THEY HAVE TO BE EVENLY SPREAD IN THE TWO
14 GROUPS.

15 IF THAT'S NOT TRUE -- LET'S SAY THERE'S A LOT
16 MORE RISK FACTORS AMONG THE SMOKERS, THEN YOU ARE NOT
17 LOOKING AT JUST THE SMOKING PHENOMENON ANYMORE. YOU MAY
BE

18 LABELED SMOKERS, BUT YOU'RE LOOKING AT THE EFFECT OF
SMOKING

19 AND DIET AND EXERCISE AND A BUNCH OF OTHER THINGS.

20 AND SO THE LEVIN FORMULA OVERSTATES IN THAT
21 CASE. IT'S OFF.

22 Q. HOW DOES THIS CONDITION THAT YOU JUST DESCRIBED
23 FOR US UNDER WHICH IT'S APPROPRIATE TO USE THE LEVIN
FORMULA
24 RELATE TO THE STATISTICAL PRINCIPLE OF CONFOUNDING THAT
YOU
25 EXPLAINED TO US EARLIER?
26 A. CONFOUNDING SHOWS UP IN A LOT OF DIFFERENT WAYS
27 WHEN DOING STATISTICAL ESTIMATES, AND MANY OTHER KINDS OF
28 ESTIMATES OTHER THAN THE LEVIN FORMULA.

4577

1 THIS IS A MANIFESTATION OF CONFOUNDING WITH THE
2 LEVIN FORMULA. IT'S THE MIXING TOGETHER OF EFFECTS FROM
3 DIFFERENT SOURCES.

4 SO ONE CAN NO LONGER SAY THAT THE OBSERVED
EFFECT
5 IS DUE TO ONE THING ONLY.

6 Q. AND DR. WECKER, HAVE YOU ANALYZED THE CPS-II
DATA

7 SET TO DETERMINE WHETHER OR NOT THOSE DATA SATISFY THE
8 CONDITION FOR THE PROPER USE OF THE LEVIN FORMULA?

9 A. I HAVE DONE THAT ANALYSIS.

10 Q. LET ME ASK YOU FIRST TO EXPLAIN TO US THE
MANNER

11 IN WHICH YOU CONDUCTED THE ANALYSIS.

12 A. WHAT I DID WAS TAKE THE ENTIRE DATA SET, A

13 MILLION QUESTIONNAIRES, AND I COMPARED SMOKERS AGAINST
14 NONSMOKERS IN TERMS OF OTHER RISK FACTORS RECOGNIZED IN
THE
15 LITERATURE AND RECORDED IN THE SURVEY.
16 AND I JUST WENT THROUGH THESE VARIOUS RISK
17 FACTORS, AND FOUND OUT WHETHER THEY ARE EVENLY SPREAD
18 BETWEEN THE TWO GROUPS OR WHETHER MAYBE SMOKERS HAVE MORE
OF
19 THE RISK FACTORS OR LESS.
20 Q. OKAY. THE FIRST ANALYSIS YOU DID WAS BASED
UPON

21 RISK FACTORS REPORTED IN THE SCIENTIFIC LITERATURE; IS
THAT
22 CORRECT?
23 A. I THINK -- I'M CONFUSED BY THAT. YOU SAY "THE
24 FIRST ANALYSIS."
25 THE ANALYSIS WE ARE TALKING ABOUT. THERE AREN'T
26 TWO HERE.
27 Q. THAT'S A BAD QUESTION. LET ME TRY AGAIN.
28 DID YOU ANALYZE THE CPS-II DATA SET ITSELF TO

4578

1 DETERMINE WHAT FACTORS WERE ASSOCIATED WITH INCREASED
2 MORTALITY WITHIN THE DATA SET?

3 A. YES, I ALSO DID THAT.
4 FOR EACH OF THE RISK FACTORS THAT I LOOKED
INTO,
5 NOT ONLY DID I LOOK AT THE LITERATURE TO NOTE THAT THERE
ARE
6 RECOGNIZED RISK FACTORS THAT WERE ALSO ASKED ABOUT ON THE
7 QUESTIONNAIRE, BECAUSE I HAVE TO HAVE THE DATA, BUT I
8 DOUBLE-CHECKED MYSELF THAT THEY INDEED WERE RISK FACTORS,
9 BECAUSE CALCULATING RISK FACTOR IS A STATISTICAL THING,
NOT
10 A MEDICAL THING.
11 IT'S STATISTICIANS WHO TEACH MEDICAL DOCTORS
WHAT
12 A RISK FACTOR IS, NOT THE OTHER WAY AROUND.
13 AND SO I CALCULATED ALL THOSE RISK FACTORS, AND
I
14 VERIFIED THAT ALL THE ONES THAT ARE GOING TO APPEAR ON THE
15 CHARTS WE HAVE COMING UP WERE INDEED RISK FACTORS FOR
16 MORTALITY.
17 Q. AND DID YOU, IN FACT, FIND DIFFERENCES IN
18 MORTALITY RISK FACTORS BETWEEN SMOKERS AND NONSMOKERS
OTHER
19 THAN SMOKING?
20 A. OH, YES. LOTS OF THEM.
21 MR. FURR: LET ME ASK YOU TO STEP DOWN AND USE
22 THE CHARTS THAT WE ARE GOING TO MARK AS 6280 AND 6281 TO

23 EXPLAIN TO THE JURY THE FACTORS FOR WHICH YOU COMPARED
24 SMOKERS AND NONSMOKERS.
25 (DOCUMENTS MORE PARTICULARLY
26 LISTED IN THE INDEX MARKED
27 FOR IDENTIFICATION DEFENDANTS'
28 EXHIBITS # 6280 AND 6281)

4579

1 THE COURT: AND AFTER YOU PUT THE STICKER ON,
2 COULD YOU JUST TURN THEM IN MY DIRECTION SO I SEE WHAT
THEY
3 ARE.

4 MR. FURR: THAT'S 6280 -- I'M NOT SURE HOW WE
5 ARE GOING TO DO THIS -- AND 6281.

6 THE COURT: OKAY.
7 Q. DR. WECKER, USING 6280 AND 81, WOULD YOU
EXPLAIN

8 TO US THE FACTORS THAT YOU USED TO COMPARE SMOKERS AND

9 NONSMOKERS AND WHY YOU USED THOSE FACTORS.

10 A. OKAY. LET ME START WITH 6280. THE FIRST ITEM
IS
11 THE RISK FACTOR OF "LITTLE OR NO EXERCISE."

12 I THINK IT WILL BE HELPFUL IF I GO TO THE
13 QUESTIONNAIRE, JUST TO MAKE CONTACT WITH THE SOURCE DATA.

14 THE SECOND PAGE OF THE QUESTIONNAIRE, THE TOP LEFT.
15 Q. INDICATE THE EXHIBIT NUMBER AS YOU GO.
16 A. YES. JUST TO BE SURE I'M CLEAR, I WILL SHOW
6275
17 (INDICATING). AND THAT'S THE SECOND PAGE OF THE
18 QUESTIONNAIRE.
19 MR. BROWN: I HAVE NO IDEA WHAT HE'S REFERRING
20 TO.
21 THE WITNESS: 6275.
22 MR. BROWN: I DON'T KNOW WHAT THOSE NUMBERS
23 ARE. I'VE NEVER BEEN SHOWN THOSE. OKAY.
24 THE COURT: THOSE HAVE ALREADY BEEN MARKED
HERE
25 IN OPEN COURT.
26 MR. FURR: THESE ARE THE EXHIBITS WE MARKED IN
27 OPEN COURT AS WE PROCEEDED THROUGH THE EXAMINATION.
28 THE COURT: OKAY.

4580
1 THE WITNESS: OKAY.
2 MR. BROWN: IF THERE WAS JUST A SECOND BETWEEN
3 THE NUMBER AND MY BEING ABLE TO EVEN SEE IT, THAT WOULD BE
4 ALL RIGHT.
5 THE WITNESS: I WAS HOPING TO BRING SOME
6 CLARITY. I'M NOT SURE IF I'VE SUCCEEDED HERE.
7 I HAVE GOT THESE CHARTS, 6280 AND 6281. AND I

8 WANTED TO SHOW, BEFORE I EXPLAIN THOSE TWO CHARTS, THAT
THEY
9 HAVE A CONNECTION TO THE QUESTIONNAIRE.
10 AND THE FIRST QUESTION ON 6280, THE FIRST ISSUE
11 IS "LITTLE OR NO EXERCISE," AND THEN THERE'S A BUNCH MORE
12 RISK FACTORS THAT I'LL NOT SPEND AS MUCH TIME ON.
13 "LITTLE OR NO EXERCISE" COMES FROM THE SECOND
14 PAGE OF THE QUESTIONNAIRE, WHERE IT SAYS AT THE TOP: "HOW
15 MUCH EXERCISE DO YOU GET?"
16 AND IF YOU CHECK "NONE" OR "SLIGHT," RATHER
THAN
17 CHECK "MODERATE" OR "NEVER," "NONE" OR "SLIGHT," I CALL
THAT
18 "LITTLE OR NO EXERCISE." I COULD HAVE CALLED IT "NONE" OR
19 "SLIGHT," BUT "LITTLE OR NO" SEEMED TO MAKE SENSE.
20 AND THEN I LOOKED AT THE COLLECTION OF SMOKERS
TO
21 FIND OUT WHAT PERCENT OF THEM GOT LITTLE OR NO EXERCISE,
22 BECAUSE THAT'S A RISK FACTOR. WE SHOULD DO OUR EXERCISES.
23 AND THEN I LOOKED AT THE PERCENTAGES OF
24 NONSMOKERS. I LOOKED AT SMOKERS AND NONSMOKERS. I LOOKED
25 AT THE PERCENTAGE OF EACH GROUP THAT IS GETTING THE RISK
26 FACTOR, WHICH IS THE COUCH POTATO, "LITTLE OR NO
EXERCISE."

27 AND THEN I DETERMINED, BY JUST COMPARING WHICH
28 OF
29 THE TWO GROUPS HAD THE MOST OF THAT RISK FACTOR. IF I HAD
30 A

4581

1 MARKER AND WERE ALLOWED TO DO SO, JUST TO KEEP IT
STRAIGHT,

2 I'D PUT A LITTLE CHECK IN THE BOX HERE UNDER "SMOKERS,"
3 BECAUSE IT TURNED OUT THAT IT'S SMOKERS THAT HAVE LESS
4 EXERCISE, AND THEREFORE MORE OF THAT RISK FACTOR.

5 Q. OKAY.

6 A. NOW THAT WE HAVE SEEN THAT ONE, I'LL JUST
7 CONTINUE WITH THE OTHERS.

8 Q. WHY DON'T YOU USE ONE MORE TO EXPLAIN TO US HOW
9 YOU CONTINUED MAKING THESE ANALYSES BETWEEN SMOKERS AND
10 NONSMOKERS.

11 A. WELL, YOU MEAN WITH THE QUESTIONNAIRE?

12 Q. YES.

13 A. I COULD DO THE FRIED FOODS.

14 Q. SHOW IT TO MR. BROWN, IF YOU WOULD, PLEASE.

15 A. LOOKING AT 6276, I WILL TAKE THE TOP ONE OFF OF
16 THIS OTHER CHART, EATING MORE FRIED FOODS.

17 THESE ARE THE -- CHART 6281 IS THE EATING AND
18 DRINKING CHOICES. AND SO I CAN FIND OUT WHICH GROUP,
19 SMOKERS OR NONSMOKERS, EAT MORE FRIED FOODS BY JUST

LOOKING

20 AT THE QUESTIONNAIRE, CALCULATING A PERCENTAGE THAT HAS A
21 HIGHER PROPORTION OF THESE FRIED FOODS THAT ARE DOWN HERE
IN
22 QUESTION 2.
23 IF THEY CHECKED "DO NOT EAT FRIED FOODS," THEN
24 THEY ARE DEFINITELY NOT -- OR IF THEY CHECKED "A LOT OF
25 FRIED FOODS," THEN I COMPARE THEM IN HOW MUCH THEY CHECK.
26 AND I SEE WHICH DOES MORE.
27 AND THE RESULT WAS, AGAIN, SMOKERS, HAVING
28 REPORTED ON THEIR QUESTIONNAIRES THAT THEY EAT MORE FRIED

4582

1 FOODS THAN NONSMOKERS, THAT'S A RISK FACTOR. FRIED FOODS
2 ARE A RISK FACTOR.

3 IF I WERE MAKING CHECK MARKS, I WOULD PUT A
CHECK

4 MARK IN THE "SMOKER" BOX.

5 Q. OKAY. LET ME ASK A COUPLE OF QUESTIONS.

6 EACH OF THESE FACTORS THAT YOU LISTED AS A
7 LIFESTYLE FACTOR, THAT IS A FACTOR THAT HAS BEEN REPORTED
IN

8 THE SCIENTIFIC LITERATURE AND VERIFIED BY YOU IN THE

CPS-II

9 DATA TO BE A STATISTICAL RISK FACTOR FOR DYING YOUNGER; IS
10 THAT CORRECT?

11 A. FOR DYING.
12 Q. FOR DYING?
13 A. IF YOU LOOK, LIKE, SAY AT A FOUR-YEAR PERIOD,
AND
14 THE GROUP THAT HAS A RISK FACTOR, IT HAS A HIGHER DEATH

15 RATE.

16 Q. AND YOU COMPARED THE PERCENTAGE OF SMOKERS
VERSUS

17 THE PERCENTAGE OF NONSMOKERS IN THE CPS-II DATA ON THE
BASIS

18 OF EACH OF THESE FACTORS; IS THAT CORRECT?

19 A. YES.

20 Q. OKAY. YOU BROUGHT WITH YOU TWO CHARTS THAT
21 DEMONSTRATE THE GROUP WHICH YOU FOUND TO HAVE THE HIGHER
22 PERCENTAGE FOR -- LIKELIHOOD OF HAVING THE RISK FACTOR
23 THAT'S BEING LOOKED AT; IS THAT CORRECT?

24 A. YES.

25 MR. FURR: LET ME ASK YOU TO LOOK AT WHAT
WE'VE

26 MARKED AS 6282 AND 6283.

27 (DOCUMENTS MORE PARTICULARLY

28 LISTED IN THE INDEX MARKED

4583

1 FOR IDENTIFICATION DEFENDANTS'
2 EXHIBIT # 6282 AND 6283)
3 MR. FURR: YOUR HONOR, THE NEXT TWO CHARTS ARE
4 TITLED "LIFESTYLE FACTORS" WITH CHECKS IN BOXES.
5 THE COURT: I UNDERSTAND.
6 MR. FURR: Q. AND I ASK YOU TO EXPLAIN WHAT
7 YOU FOUND WHEN YOU ANALYZED THE CPS-II DATABASE.
8 A. WELL, WITH RESPECT TO THE FIRST CHART, WHICH IS
9 6282, I FOUND THAT FOR EVERY ONE OF THESE RISK FACTORS,
10 EXERCISE, TOXIC EXPOSURES, AND THEN THESE MEASURES OF
SOCIAL
11 SUPPORT, WHICH I DISCUSSED EARLIER, HAVING FRIENDS --
12 ACTUALLY, THE RISK FACTOR IS NOT HAVING FRIENDS, BEING NOT
13 MARRIED. THAT'S A RISK FACTOR -- FOR EVERY ONE OF THOSE,
14 THE SMOKERS HAD MORE OF THE RISK FACTORS, EVERY ONE.
15 AND THEN ON CHART 6283, WHERE THE "EATING AND
16 DRINKING RISK FACTORS" WERE, FOR FRIED FOODS AND HIGH FAT
17 FOODS, AND MOST ALL OF THE OTHERS EXCEPT TWO, AGAIN, THE
18 SMOKERS HAD MORE OF THE RISK FACTOR, TAKING LESS VITAMINS,
A
19 RISK FACTOR, JUST TO PICK ONE EXAMPLE.
20 BUT THERE WERE TWO EXCEPTIONS. IT WAS THE
21 NONSMOKERS THAT ATE MORE DESSERT AND MORE BUTTER AND
22 MARGARINE.
23 Q. OKAY. THE JURY HAS ALSO HEARD THE TERM
24 "STATISTICAL SIGNIFICANCE" DURING THE COURSE OF THE TRIAL.

25 THAT'S A STATISTICAL PRINCIPLE, ISN'T IT,
26 DR. WECKER?
27 A. YES.
28 Q. WOULD YOU EXPLAIN TO THE JURY WHAT "STATISTICAL

4584

1 SIGNIFICANCE" MEANS.
2 A. "STATISTICAL SIGNIFICANCE" IS A TERM IN A SET
OF

3 PROCEDURES DEvised BY STATISTICIANS TO DISTINGUISH WHEN
YOU
4 SEE A DIFFERENCE, IF THE DIFFERENCE IS REAL OR IF IT MIGHT
5 JUST BE A FLUKE FROM SAMPLING.
6 LET ME GIVE AN EXAMPLE. IF I WERE TESTING
7 WHETHER A COIN WAS A FAIR COIN, HALF -- 50 PERCENT CHANCE
8 HEADS, 50 PERCENT CHANCE TAILS, AND I TOSSED IT ONLY 10
9 TIMES, I GOT SIX HEADS AND FOUR TAILS, I WOULD DO MY
10 FORMULAS AND CONCLUDE THAT'S NOT ENOUGH EVIDENCE TO
DECLARE
11 STATISTICALLY SIGNIFICANT BIAS IN THAT COIN. WE DIDN'T
GIVE
12 IT VERY MUCH -- IT WAS PRETTY CLOSE TO 50 PERCENT. THE
13 FORMULAS FIGURE THAT OUT.
14 BUT IF I FLIPPED IT 1,000 TIMES AND I GOT 80

15 PERCENT HEADS, THE FORMULAS VERY QUICKLY FIGURE OUT A THIS
16 COIN IS NOT A FAIR COIN.

17 THE SAME PRINCIPLE APPLIES HERE. WHEN I HAVE
18 CHECKED THAT SMOKERS HAVE MORE, THE ISSUE ARISES, WELL, IT
19 MAY BE FLUKE OF SAMPLING, BECAUSE WE ONLY HAD A MILLION
20 PEOPLE, OR IS THIS SOMETHING REAL, THAT'S SIGNIFICANTLY
21 SIGNIFICANT?

22 Q. THAT WAS GOING TO BE MY NEXT QUESTION.
23 DID YOU CONDUCT STATISTICAL SIGNIFICANCE

TESTING

24 ON THE COMPARISONS YOU MADE FOR EACH OF THESE LIFESTYLE
25 FACTORS BETWEEN SMOKERS AND NONSMOKERS?

26 A. YES.

27 Q. AND ARE THE DIFFERENCES THAT YOU'VE INDICATED
28 HERE ON THESE CHARTS STATISTICALLY SIGNIFICANT
DIFFERENCES?

4585

1 A. YES, THEY ARE.

2 MR. BROWN: OBJECTION. CALLS FOR A MEDICAL
3 OPINION.

4 MOVE TO STRIKE THE ANSWER.

5 THE COURT: OVERRULED.

6 THE WITNESS: EVERY ONE IS STATISTICALLY
7 SIGNIFICANT.

8 MR. FURR: Q. LET ME ASK YOU, WHEN WE CHECK

9 HERE, FOR EXAMPLE, THAT SMOKERS GOT STATISTICALLY LESS
10 EXERCISE THAN NEVER-SMOKERS, DOES THAT MEAN THAT EVERY
11 SMOKER GETS LESS EXERCISE THAN EVERY NEVER-SMOKER?
12 A. NO. IT'S JUST AN AVERAGE RESULT. THERE IS A
13 TENDENCY TOWARD LESS EXERCISE.
14 Q. OKAY.
15 DR. WECKER, BASED UPON THE ANALYSIS THAT YOU
JUST
16 PRESENTED TO US OF THE DIFFERENT DISTRIBUTION OF THESE
17 LIFESTYLE FACTORS BETWEEN SMOKERS AND NONSMOKERS, DO YOU
18 HAVE AN OPINION AS TO WHETHER OR NOT THE CPS-II DATA SET
19 SATISFIES THE CONDITION UNDER WHICH THE LEVIN FORMULA CAN
BE
20 USED TO ACCURATELY CALCULATE ATTRIBUTABLE MORTALITY

21 PROJECTIONS?
22 MR. BROWN: OBJECTION. CALLS FOR
23 EPIDEMIOLOGICAL OPINION. NOT QUALIFIED.
24 THE COURT: OVERRULED.
25 THE WITNESS: YES, I HAVE THAT OPINION.
26 MR. FURR: Q. WHAT IS YOUR OPINION?
27 A. THE CONDITIONS REQUIRED BY THE LEVIN FORMULA
ARE
28 NOT SATISFIED BECAUSE THE TWO GROUPS, SMOKERS AND

4586

1 NONSMOKERS, DO NOT DIFFER ON ONE THING ONLY, BUT THEY
DIFFER

2 ON MANY THINGS.

3 SO THE LEVIN FORMULA CAN NO LONGER CALCULATE
THE

4 EFFECT OF SMOKING ALONE, BUT INSTEAD WILL REPORT THE
EFFECT

5 OF SMOKING OF 24-PLUS THINGS THAT THE CPS-II DIDN'T EVEN
6 MEASURE. PERHAPS AT LEAST THE 24.

7 Q. AND THAT LEVIN FORMULA IS THE FORMULA THAT THE
8 CDC USED TO CALCULATE SMOKING-ATTRIBUTABLE MORTALITY BASED
9 ON THE CPS-II DATA, ISN'T IT?

10 A. THAT'S A FACT.

11 Q. OKAY. DR. WECKER, YOU JUST DEMONSTRATED TO US
12 YOUR FINDINGS WITH RESPECT TO THE LIKELIHOOD OF INDIVIDUAL
13 RISK FACTORS OCCURRING IN SMOKERS VERSUS NONSMOKERS; IS

THAT

14 CORRECT?

15 A. YES.

16 Q. DID YOU ALSO ANALYZE THE CPS-II DATA TO
DETERMINE

17 WHETHER OR NOT THESE LIFESTYLE RISK FACTORS THAT YOU HAVE
18 IDENTIFIED FOR US TEND TO CLUSTER IN INDIVIDUAL SMOKERS?

19 A. YES, I DID THAT.

20 Q. DID YOU PREPARE A CHART THAT ILLUSTRATES YOUR

21 FINDINGS?
22 A. YES.
23 MR. FURR: LET ME ASK YOU TO LOOK AT WHAT
WE'VE
24 MARKED AS 6284, WHICH IS A CHART TITLED "LIFESTYLE FACTORS
25 THAT INCREASE MORTALITY RISK SMOKERS VERSUS
NEVER-SMOKERS."
26 (DOCUMENT MORE PARTICULARLY
27 LISTED IN THE INDEX MARKED
28 FOR IDENTIFICATION DEFENDANTS'

4587
1 EXHIBIT # 6284)
2 MR. FURR: Q. AND I ASK YOU TO EXPLAIN WHAT
3 YOU FOUND WHEN YOU LOOKED AT THAT QUESTION.
4 MR. BROWN: I'M GOING TO OBJECT TO THIS CHART
5 AND I'D LIKE TO BRING IT BACK IN THE HALLWAY AND SHOW YOU
6 WHY.
7 THE COURT: OKAY.
8 (COURT AND COUNSEL CONFER OUTSIDE

9 THE PRESENCE OF THE JURY)
10 THE COURT: AFTER A SIDEBAR, I THINK COUNSEL
11 HAVE WORKED THIS OUT BETWEEN THEMSELVES.
12 LET'S PROCEED AND SEE IF THERE'S ANY

OBJECTIONS.

13 LET'S SEE HOW WE GO.

14 MR. FURR: Q. DR. WECKER --

15 THE COURT: I TAKE IT THAT, AFTER THE SIDEBAR,
16 WITH THE UNDERSTANDING THAT WE REACHED AT THE SIDEBAR,
THERE

17 IS NO OBJECTION TO 6284 BEING SHOWN TO THE JURY,
PRESERVING

18 YOUR RIGHT TO OBJECT, DEPENDING ON HOW THINGS GO.

19 MR. BROWN: THAT WE DON'T GO BACK TO THAT

20 THICKET.

21 THE COURT: OKAY. I THINK IT'S BEEN WORKED
OUT.

22 MR. FURR: Q. DR. WECKER, I WANT TO ASK YOU
23 SOME QUESTIONS ABOUT 6284.

24 BEFORE WE DO THAT, I WANT TO TALK ABOUT THE
LAST

25 ANALYSIS THAT WE JUST DISCUSSED AND MAKE SURE WE ARE CLEAR
26 PRECISELY WHAT YOU INTENDED TO CONVEY TO THE JURY.

27 WHEN WE WERE LOOKING AT THE TWO CHARTS THAT YOU
28 PREPARED BASED ON YOUR ANALYSES OF LIFESTYLE FACTORS AND
THE

4588

1 UNEVEN DISTRIBUTION OF THOSE FACTORS BETWEEN SMOKERS AND
2 NONSMOKERS, YOU WERE TESTIFYING THAT THOSE LIFESTYLE

FACTORS

3 ARE FACTORS THAT ARE STATISTICALLY ASSOCIATED WITH AN
4 INCREASED MORTALITY; IS THAT CORRECT?

5 A. THAT'S TRUE.

6 Q. AND TO BE CLEAR, YOU WERE NOT TESTIFYING THAT
7 EACH OF THESE FACTORS HAS BEEN PROVEN MEDICALLY TO BE A
8 CAUSATION OF MORTALITY; IS THAT CORRECT?

9 A. THAT'S TRUE. I HAVE NO OPINION ABOUT CAUSE.
10 THIS IS JUST A STATISTICAL ASSOCIATION CALLED A RISK
11 FACTOR.

12 Q. BY THE WAY, DR. WECKER, THE PHRASE "RISK
13 FACTOR,"

14 THAT'S A STATISTICAL TERM?

15 A. YES.

16 Q. WHAT DOES IT MEAN?

17 A. IT MEANS JUST THIS: IF YOU HAVE TWO GROUPS
18 THAT

19 ARE DISTINGUISHED BY SOME LABEL, THAT IS THE EXERCISERS
20 AND

21 THE NONEXERCISERS, IF YOU NOTICE A DIFFERENCE IN THE DEATH
22 RATES IN THOSE TWO GROUPS, THEN EXERCISE BECOMES A RISK
23 FACTOR. IN THE CASE OF EXERCISE, LACK OF EXERCISE.

24 MR. BROWN: I MOVE TO STRIKE THAT.

25 MR. FURR: THAT'S WHAT IS A RISK FACTOR.

26 MR. BROWN: USING "RISK" THERE FALLS INTO THE
27 PROBLEM WE HAVE.

24 MR. FURR: YOUR HONOR, THAT'S A STATISTICAL
25 DEFINITION OF THE TERM "RISK FACTOR." THAT'S WHAT IT
SAYS.

26 MR. BROWN: I DON'T THINK SO.

27 THE COURT: WHY DON'T YOU ASK HIM SOME MORE
28 QUESTIONS SO THAT IT'S CLEAR TO THE JURY WHAT THE WORD

4589

1 "RISK" MEANS IN THAT CONTEXT, AND WHETHER IT CONNOTES
2 ANYTHING ABOUT CAUSATION OR WHETHER IT IS LIMITED TO A
3 STATISTICAL ASSOCIATION. BECAUSE I THINK WHAT MR. BROWN

IS

4 SAYING IS THERE'S SOME POTENTIAL CONFUSION WITH THE USE OF
5 THE WORD "RISK," AND I THINK WE NEED TO HAVE IT FLESHED

OUT

6 A LITTLE FURTHER BEFORE I RULE ON HIS MOTION.

7 MR. FURR: OKAY.

8 Q. DR. WECKER, WHEN YOU USE THE TERM "RISK
FACTOR,"

9 IS IT CORRECT THAT YOU ARE USING THAT PHRASE TO DESCRIBE
ONE

10 FACTOR THAT IS STATISTICALLY ASSOCIATED WITH AN INCREASED
11 LIKELIHOOD OF A SECOND EVENT AND FACTOR OCCURRING?

12 MR. BROWN: YOUR HONOR, SAME OBJECTION.

13 "INCREASED LIKELIHOOD" IS THE PROBLEM THERE.
14 MR. FURR: THAT'S PURELY A STATISTICAL
CONCEPT.
15 MR. BROWN: THAT'S THE ARGUMENT.
16 THE COURT: WHY DON'T YOU CHANGE THE WORD
17 "LIKELIHOOD" TO "INCIDENCE." I THINK IT WILL SOLVE
18 EVERYBODY'S PROBLEM.
19 MR. BROWN: I DIDN'T HEAR YOUR WORD.
20 THE COURT: "INCIDENCE."
21 IF YOU ASK THE QUESTION THAT WAY, YOU MAY BE
ABLE
22 TO FLESH OUT THE DISTINCTION HERE THAT AT LEAST MR. BROWN
23 HAS IN MIND.
24 AND UNTIL I HEAR MORE, I'M NOT SURE WHETHER OR
25 NOT I AGREE WITH HIM. SO WE NEED TO PURSUE THIS A LITTLE
26 FURTHER. THE PROBLEM IS IN THE USE OF THE WORDS
27 "LIKELIHOOD" AND "RISK" AND SO FORTH.
28 IF WE COULD EXPLAIN SUBSTANTIVELY WHAT WE ARE

4590
1 TALKING ABOUT WITHOUT USING WORDS THAT MAY HAVE MORE THAN
2 ONE CONNOTATION. AND I HAVE IN MIND WHAT THE WITNESS HAS
3 SAID. I THINK IT WOULD HELPFUL TO THE JURY AND IT WOULD
BE
4 HELPFUL TO THE COURT IN RULING ON THE MOTION.
5 DO YOU UNDERSTAND WHAT I'M SAYING?

6 MR. FURR: I DO.
7 THE COURT: WHY DON'T YOU PROCEED AND SEE IF
YOU
8 CAN DO THAT.
9 MR. FURR: Q. OKAY. LET ME ASK YOU FIRST,
10 DR. WECKER, WHEN YOU USE THE TERM "LIKELIHOOD," AS WE USED
11 IT IN RESPONSE TO THE LAST QUESTION, DO YOU MEAN TO IMPLY
A
12 CAUSAL RELATIONSHIP BETWEEN ONE FACTOR AND THE OTHER OR IS
13 IT A STATISTICAL ASSOCIATION?
14 A. NOT A CAUSAL FACTOR. THAT'S THE IMPORTANT

15 DISTINCTION. A RISK FACTOR IS JUST ANY PHENOMENA
ASSOCIATED
16 STATISTICALLY WITH HIGHER MORTALITY. IT DOESN'T MEAN IT
17 CAUSES THE MORTALITY.
18 Q. OKAY.
19 A. TOBACCO USE IS A RISK FACTOR. IT DOESN'T MEAN
IT
20 CAUSES ANYTHING. IT COULD, AND I'M NOT HERE TO SAY IT
21 DOESN'T, BUT THE STATISTICIAN CAN'T PROVE CAUSE WITH THIS
22 KIND OF DATA.
23 THE COURT: YOU ARE NOT HERE TO SAY EITHER IT
24 DOES OR DOESN'T?
25 THE WITNESS: I CANNOT.

26 THE COURT: YOU ARE NOT SAYING THAT IT CAN
FIND
27 TWO GROUPS OF THINGS THAT ARE ASSOCIATED -- YOU ARE NOT
28 SAYING THAT THE ONE INCREASES THE CHANCE OF THE OTHER

4591
1 OCCURRING, BUT RATHER YOU ARE MERELY SAYING THAT THE TWO
OF
2 THEM COEXIST?
3 THE WITNESS: THAT'S EXACTLY RIGHT.
4 THE COURT: IN A STATISTICAL WAY?
5 THE WITNESS: THAT'S EXACTLY CORRECT.
6 THE COURT: DOES THAT TAKE CARE OF THE
PROBLEM?
7 MR. BROWN: I THINK SO, YOUR HONOR.
8 THE COURT: OKAY.
9 MR. BROWN: HOPEFULLY, WE WON'T DRIFT BACK.
10 THE COURT: I THINK THERE'S BEEN SOME
POTENTIAL
11 ARGUMENT ABOUT WHAT WORDS MEAN, BUT I THINK THESE LAST
12 SERIES OF QUESTIONS AND ANSWERS HAVE FLESHED IT OUT TO
13 EVERYBODY'S SATISFACTION. AT LEAST, I HOPE SO.
14 IF NOT, ONE OF YOU HAS TO SPEAK UP. OTHERWISE,
15 I'M GOING TO ASSUME THAT THIS HAS BEEN TAKEN CARE OF TO
BOTH
16 OF YOUR SATISFACTIONS.

17 MR. BROWN: THANK YOU, YOUR HONOR.
18 THE COURT: OKAY.
19 MR. FURR: Q. OKAY, DR. WECKER. USING THAT
20 UNDERSTANDING OF WHAT THE TERM "RISK FACTORS" MEANS, DID
YOU
21 ANALYZE THE CPS-II DATA TO DETERMINE WHETHER OR NOT
22 MORTALITY RISK FACTORS TEND TO CLUSTER IN SMOKERS VERSUS
23 NONSMOKERS?
24 A. YES, I DID.
25 Q. COULD YOU EXPLAIN THE RESULTS OF YOUR ANALYSIS
26 USING 6284.
27 A. THIS IS A MORE COMPLICATED CHART. IT WILL TAKE
A
28 MOMENT TO EXPLAIN IT.

4592

1 LET ME JUST PICK ONE OF THE BARS HERE, SAY THE
2 ONE THAT HAS A 12 ON IT.

3 WHAT I DID WAS I WENT -- HAND ME THE
4 QUESTIONNAIRE.
5 Q. THE QUESTIONNAIRE?
6 A. I WENT BACK TO THE QUESTIONNAIRE. AND I FOUND
7 ALL THE PEOPLE THAT HAD EXACTLY 12 RISK FACTORS.
8 I SHOWED YOU 24 BEFORE. SOME PEOPLE HAD MORE

9 THAN 12, SOME HAD LESS, BUT I FOUND ALL THE PEOPLE THAT
10 EXACTLY 12.
11 AND THEN I TOOK THE PEOPLE THAT HAD EXACTLY 12
12 RISK FACTORS, AND I PUT THEM INTO TWO PILES, THE SMOKERS
AND
13 THE NONSMOKERS, AND REPORTED THE RESULTS ON THIS CHART
HERE.
14 WHEN IT COMES TO 12 RISK FACTORS, IT IS THE
CASE
15 THAT APPROXIMATELY THE SMOKERS OUTNUMBER THE NONSMOKERS BY
16 ABOUT 3-TO-1. FOR EVERY ONE NONSMOKER, THERE IS ABOUT
THREE
17 SMOKERS WITH THE 12 RISK FACTORS. IF YOU GO TO HIGHER
18 NUMBERS OF RISK FACTORS, LIKE 13 OR 14, THE SMOKERS
19 PREDOMINATE AS MUCH AS ABOUT 5-TO-1.
20 AND THEN IF YOU GO DOWN TO THE PEOPLE WHO ARE
21 PERFECT, AS WE WISH WE ALL WERE, WITH ALMOST NO RISK
22 FACTORS, IT GOES THE OTHER WAY AROUND. IT'S THE
NONSMOKERS
23 WHO ARE ALWAYS EATING THEIR LEAFY GREENS AND TAKING THEIR
24 VITAMINS.
25 WHAT THIS CHART ADDS IS THAT IT SHOWS THE
26 CLUSTERING OF LOTS OF RISK FACTORS TOGETHER IN THE SMOKING
27 POPULATION, OVERWHELMINGLY MORE SO THAN THE NONSMOKING
28 POPULATION.

4593

1 Q. BEFORE YOU SIT DOWN, DR. WECKER, BASED UPON THE
2 ANALYSIS THAT YOU JUST EXPLAINED TO US IN 6284, DO YOU
HAVE
3 AN OPINION AS TO WHETHER OR NOT THE CPS-II DATABASE
4 SATISFIES THE CONDITION THAT YOU EXPLAINED TO US UNDER
WHICH
5 THE LEVIN FORMULA CAN BE USED TO ACCURATELY CALCULATE THE
6 ATTRIBUTABLE MORTALITY CALCULATIONS?
7 A. I DO HAVE AN OPINION.
8 Q. AND WHAT IS THAT OPINION?
9 A. WELL, IT'S NOT PROPER TO USE THE LEVIN FORMULA
10 AND THEN CLAIM THAT ALL THE EXCESS DEATHS ARE DUE OR
CAUSED
11 BY SMOKING ALONE.
12 MR. BROWN: MOVE TO STRIKE, YOUR HONOR.
13 OBJECTION TO THAT.
14 THE COURT: I'M GOING TO SUSTAIN AND STRIKE
THAT
15 ANSWER.
16 MR. FURR: OKAY.
17 Q. DR. WECKER, YOU HEARD THE COURT'S RULING.
18 THE COURT: MY UNDERSTANDING ABOUT WHAT YOU
TOLD
19 US IS YOU'RE NOT GIVING ANY OPINIONS ON CAUSATION; RIGHT?
20 THAT'S WHAT I UNDERSTOOD YOU TO SAY.

21 THE WITNESS: THAT'S TRUE, YOUR HONOR. I'M
NOT
22 ABLE TO SAY -- NOT AS A STATISTICIAN, WITH THIS DATA, ABLE
23 TO SAY ONE WAY OR ANOTHER WHETHER ANY OF THOSE RISK
FACTORS
24 CAUSE ANY DISEASE.
25 THE COURT: ALL RIGHT.
26 THE WITNESS: BUT I DO HAVE THE OPINION THAT
27 NOBODY ELSE CAN DO IT EITHER.
28 THE COURT: DON'T TELL US WHAT YOUR OPINION
IS.

4594

1 I'M JUST SAYING TO YOU -- I THOUGHT WHAT YOU SAID AT THE
2 START OF THIS IS YOU'RE NOT GOING TO BE GIVING ANY MEDICAL
3 OPINIONS.
4 THE WITNESS: THIS IS ENTIRELY A STATISTICAL
5 OPINION.
6 THE COURT: YOU GO AHEAD WITH THE NEXT
QUESTION.
7 MR. FURR: Q. THE LEVIN FORMULA. REMIND US,
8 DR. WECKER, WHAT IS THE LEVIN FORMULA USED FOR?
9 A. IT CALCULATES THE NUMBER OF EXTRA DEATHS IN ONE
10 GROUP COMPARED TO ANOTHER, SUCH AS THE SMOKING GROUP

11 COMPARED TO THE NONSMOKING GROUP.
12 Q. OKAY. AND LET ME ASK YOU AGAIN WHETHER, BASED
ON
13 THIS ANALYSIS, YOU HAVE AN OPINION AS TO WHETHER THE
CPS-II
14 DATABASE SATISFIES THE CONDITION UNDER WHICH IT'S
15 APPROPRIATE TO USE THE LEVIN FORMULA TO CALCULATE
16 ATTRIBUTABLE MORTALITY PROJECTIONS?
17 MR. BROWN: THAT'S THE SAME PROBLEM,
18 ATTRIBUTABLE MORTALITY SMOKING DEATHS. THAT'S A MEDICAL
19 CAUSE, MEDICAL OPINION. ASSOCIATION.
20 MR. FURR: I NEED TO BE HEARD ON THIS.
21 THE COURT: WHAT HE'S JUST SAYING IS, IF YOU
22 WANT TO USE THE WORD "ASSOCIATION" RATHER THAN THE WORD
23 "CAUSE," HE WILL NOT HAVE AN OBJECTION.
24 MR. FURR: I DIDN'T USE THE WORD "CAUSE."
25 MR. BROWN: HE SAID "ATTRIBUTABLE." IT'S THE
26 SAME THING.
27 THE COURT: IF YOU CAN -- IF YOU CAN REPHRASE
IT
28 TO SPEAK IN STATISTICAL TERMS RATHER THAN IN MEDICAL
TERMS,

4595

1 I THINK YOU WON'T GET AN OBJECTION.
2 IT MAY WELL BE THAT YOU CAN ASK THE QUESTION

YOU

3 WANT TO ASK WITHOUT GETTING INTO MEDICAL OBJECTIONS. I
4 DON'T KNOW.

5 MR. FURR: Q. DR. WECKER, BASED ON YOUR
6 ANALYSIS, DO YOU HAVE AN OPINION AS TO WHETHER OR NOT THE
7 CPS-II DATABASE SATISFIES THE CONDITION UNDER WHICH THE
8 LEVIN FORMULA CAN BE USED TO ACCURATELY STATISTICALLY

9 CALCULATE MORTALITY -- EXCUSE ME -- ATTRIBUTABLE MORTALITY
10 PROJECTIONS?

11 MR. BROWN: OBJECTION TO "ATTRIBUTABLE."
WE'RE

12 STILL TALKING ABOUT CAUSE.

13 THE COURT: CAN'T YOU -- THAT'S THE SAME
14 QUESTION. CAN'T YOU WORD THIS QUESTION TO TAKE OUT AN
15 INFERENCE OR AN IMPLICATION IN THE QUESTION THAT YOU'RE
16 ASKING FOR A MEDICAL OPINION?

17 WHAT HE'S SAYING IS IF YOU START TALKING ABOUT
18 "ATTRIBUTABLE HEALTH CONSEQUENCES," YOU SOUND LIKE YOU'RE
19 ASKING FOR A MEDICAL OPINION.

20 SO THE QUESTION IS: CAN YOU WORD YOUR QUESTION
21 IN A WAY THAT DOESN'T ELICIT A MEDICAL OPINION, OR AT
LEAST

22 ISN'T AMBIGUOUS IN THAT RESPECT?

23 MR. FURR: YOUR HONOR, I DON'T WANT TO ARGUE IN

24 FRONT OF THE JURY. I NEED TO BE HEARD ON THIS.
25 THE COURT: LET'S HAVE A BRIEF SIDEBAR.
26 (COURT AND COUNSEL CONFER OUTSIDE
27 THE PRESENCE OF THE JURY)
28 THE COURT: BACK ON THE RECORD.

4596

1 I'M ONCE AGAIN HOPEFUL THAT THIS HAS BEEN
WORKED

2 OUT. I UNDERSTAND YOU ARE GOING TO WITHDRAW THAT
QUESTION.

3 MR. FURR: I WILL WITHDRAW THE QUESTION AND
ASK

4 IT AGAIN.

5 THE COURT: OKAY.

6 MR. FURR: I WILL ASK A DIFFERENT QUESTION.

7 THE COURT: OKAY.

8 MR. FURR: Q. DR. WECKER, BASED ON YOUR
9 ANALYSIS IN 6284, DO YOU HAVE AN OPINION AS TO WHETHER OR
10 NOT THE CPS-II DATA SET SATISFIES THE CONDITION UNDER
WHICH

11 IT'S APPROPRIATE TO USE THE LEVIN FORMULA?

12 A. I DO.

13 Q. AND WHAT IS THAT OPINION?

14 A. IT DOES NOT SATISFY THAT CONDITION.

15 Q. THANK YOU.

16 DR. WECKER, WE BEGAN THIS DISCUSSION TODAY BY
17 TALKING ABOUT THE USE OF THE LEVIN FORMULA TO CALCULATE
18 ATTRIBUTABLE RISK FOR MORTALITY FROM SMOKING; IS THAT
19 CORRECT?

20 A. YES.

21 Q. CAN THAT FORMULA BE USED TO CALCULATE -- TO
MAKE

22 THOSE SAME TYPE OF CALCULATIONS FOR OTHER FACTORS?

23 A. YES.

24 Q. AND HAVE YOU DONE SO?

25 A. YES.

26 Q. WHAT OTHER FACTORS HAVE YOU USED THE LEVIN

27 FORMULA TO MAKE THOSE TYPE OF CALCULATIONS FOR USING THE
28 CPS-II DATABASE?

4597

1 A. LACK OF EXERCISE, DIET, UNHEALTHY DIET RISK
2 FACTOR, LACK OF SOCIAL SUPPORT, STRESS, HIGH BLOOD
PRESSURE,

3 OVERWEIGHT OR UNDERWEIGHT.

4 Q. AND DID YOU PREPARE A SERIES OF CHARTS THAT CAN
5 BE USED TO ILLUSTRATE THESE ADDITIONAL RISKS, ATTRIBUTABLE
6 RISKS?

7 MR. BROWN: MOVE TO STRIKE "ATTRIBUTABLE

RISKS."

8 THE COURT: CAN YOU USE DIFFERENT LANGUAGE?
9 MR. FURR: OKAY, DR. WECKER. HAVE YOU

PREPARED

10 A SERIES OF CHARTS THAT CAN BE USED TO ILLUSTRATE THE
11 ADDITIONAL CALCULATIONS YOU MADE ON THE CPS-II DATA SET
12 USING THE LEVIN FORMULA?

13 A. YES, I DID.

14 Q. WOULD YOU STEP DOWN HERE AND USE THESE EXHIBITS
15 TO EXPLAIN TO THE JURY THE ANALYSES THAT YOU MADE AND THE
16 RESULTS THAT YOU FOUND.

17 A. I WILL.

18 MR. BROWN: WOULD YOU GIVE ME THE NUMBERS.
19 (DOCUMENT MORE PARTICULARLY
20 LISTED IN THE INDEX MARKED
21 FOR IDENTIFICATION DEFENDANTS'
22 EXHIBIT # 6285)

23 MR. FURR: Q. LET ME ASK YOU TO BEGIN BY
USING

24 EXHIBIT 6285, TITLED "'ATTRIBUTABLE' DEATHS VERSUS ACTUAL
25 DEATHS" AND EXPLAIN --

26 MR. BROWN: I'M GOING TO OBJECT TO THE PHRASE
ON

27 THAT, ON THE TOP.

28 MR. FURR: THIS IS VERY SUPERFICIAL.

4598

1 MR. BROWN: "ATTRIBUTABLE" APPEARS ON SEVERAL
OF
2 THESE. I OBJECT TO IT.
3 THERE'S THREE OF THEM THAT IT APPEARS ON.
4 THE COURT: CAN YOU CLARIFY WHAT THE WORD
5 "ATTRIBUTABLE" MEANS WITH THE SERIES OF QUESTIONS?
6 MR. FURR: Q. DR. WECKER, WOULD YOU EXPLAIN
7 WHAT THE WORD "ATTRIBUTABLE" MEANS ON THIS CHART AND --
8 MR. BROWN: I'M NOT COMFORTABLE WITH THAT
9 QUESTION. MAYBE A LEADING QUESTION.
10 THE COURT: THAT'S FINE.
11 WHY DON'T YOU GO AHEAD AND ASK A LEADING
12 QUESTION.
13 MR. FURR: Q. DR. WECKER, WE ARE GETTING
HUNG
14 UP ON THE WORD "ATTRIBUTABLE." AND LET'S BE CLEAR.

15 WHEN YOU USE THE WORD "ATTRIBUTABLE" IN THE
16 CALCULATIONS THAT YOU'VE MADE, YOU DO NOT MEAN TO INFER,
DO
17 YOU, THAT ONE FACTOR IS CAUSING OR CAUSALLY RELATED TO THE
18 OTHER FACTOR THAT'S BEING ANALYZED, DO YOU?
19 A. I DO NOT MEAN TO INFER THAT.
20 Q. AND DO YOU MEAN TO COMMUNICATE TO THE JURY THAT

21 THE FACTORS THAT YOU ARE MAKING, THESE STATISTICAL
22 COMPARISONS, ARE STATISTICALLY ASSOCIATED AS OPPOSED TO
23 NECESSARILY CAUSALLY ASSOCIATED?

24 A. THAT'S CORRECT. THERE IS STATISTICAL
25 ASSOCIATION, NOT NECESSARILY CAUSAL ASSOCIATION.

26 THE COURT: IT'S BEEN EXPLAINED NOW.

27 MR. BROWN: I DIDN'T OBJECT TO THAT.

28 THE COURT: ALL RIGHT. LET'S GO FORWARD.

4599

1 MR. FURR: Q. DR. WECKER, LET ME ASK YOU,
2 BEGINNING WITH 6285, EXPLAIN TO THE JURY THE ADDITIONAL
3 CALCULATIONS THAT YOU MADE ON THE CPS-II DATA SET USING

THE

4 LEVIN FORMULA.

5 A. OKAY. THIS IS THE FIRST SERIES OF THREE CHARTS
6 THAT WILL ALL HAVE THE SAME TITLE "'ATTRIBUTABLE' DEATHS
7 VERSUS ACTUAL DEATHS."

8 THE ACTUAL DEATHS (INDICATING) ARE THE ONES ON
9 THIS FIRST CHART. AND THERE ARE COUNTED HERE 1,108,000
10 ACTUAL DEATHS.

11 NOW, THESE WERE THE DEATHS THAT WERE COUNTED UP
12 AND REPORTED IN THE CENTER FOR DISEASE CONTROL REPORT,
WHERE

13 THE 420,000 ATTRIBUTABLE DEATHS WERE REPORTED.

14 Q. WHAT YEAR WAS THAT, DR. WECKER?

15 A. 19 -- THE DEATHS WERE IN 1990. THE REPORT WAS
16 LATER, '96, I THINK.
17 Q. OKAY.
18 A. THESE AREN'T ALL THE DEATHS FROM 1990. THESE
19 WERE THE ONES THEY COUNTED UP THAT WERE USED IN THEIR
20 ANALYSIS.
21 SO THE AUTOMOBILE ACCIDENTS WERE NOT IN HERE,
BUT
22 THE DEATHS THAT THEY DID LOOK AT FOR DOING THE CALCULATION
23 THAT ENDED UP WITH THE 420,000 ARE THESE DEATHS HERE,
THESE
24 1.1 MILLION (INDICATING).
25 SO IT'S 420,000 OUT OF 1.1 MILLION THAT THEY
26 REPORTED IN THAT ARTICLE.
27 Q. AND DID YOU DO A CALCULATION USING THE LEVIN
28 FORMULA FOR LACK OF EXERCISE USING THE CPS-II DATA SET?

4600

1 A. YES. AS THE TITLE SAYS, I'M GOING TO BE
2 COMPARING THE ACTUAL 1 MILLION DEATHS TO A NUMBER OF WHAT

3 ARE CALLED ATTRIBUTABLE DEATHS, WHERE "ATTRIBUTABLE
DEATHS"
4 MEANS EXACTLY THIS AND ONLY THIS. IT MEANS THE LEVIN
5 FORMULA.

6 MR. FURR: LET ME ASK YOU TO USE WHAT WE
MARKED
7 AS 6286 TO EXPLAIN YOUR ANALYSIS OF LACK OF EXERCISE.
8 (DOCUMENT MORE PARTICULARLY
9 LISTED IN THE INDEX MARKED
10 FOR IDENTIFICATION DEFENDANTS'
11 EXHIBIT # 6286)
12 THE WITNESS: OKAY. WHEN YOU APPLY THE LEVIN
13 FORMULA TO THE RISK FACTOR LACK OF EXERCISE, WHICH IS
14 STATISTICALLY ASSOCIATED, LACK OF EXERCISE WITH HIGHER
15 MORTALITY, YOU GET THE RESULT WHICH IS WHAT STATISTICIANS
16 CALL "ATTRIBUTABLE DEATHS" -- IT'S JUST THE NAME -- OF
17 567,000 ATTRIBUTABLE DEATHS.
18 IT DOESN'T MEAN CAUSAL. IT'S JUST A TERM
THAT'S
19 USED TO DESCRIBE THE RESULT OF THE LEVIN FORMULA. IT'S
20 CALLED "'ATTRIBUTABLE' DEATHS."
21 Q. OKAY. HAVE YOU USED THE LEVIN FORMULA TO
ANALYZE
22 THE CPS-II DATA SET FOR OTHER FACTORS?
23 A. YES. I USED LACK OF EXERCISE, AND THEN I DID
24 SOME OTHERS.
25 MR. FURR: LET ME ASK YOU TO USE 6287 TO
26 DESCRIBE YOUR OTHER ANALYSES AND THE RESULTS.
27 (DOCUMENT MORE PARTICULARLY
28 LISTED IN THE INDEX MARKED

4601

1 FOR IDENTIFICATION DEFENDANTS'
2 EXHIBIT # 6287)

3 THE WITNESS: I ALSO LOOKED AT UNHEALTHY DIET,
4 LACK OF VITAMINS, RICH FOODS, SO BASED ON THE DIET

QUESTIONS

5 IN THE QUESTIONNAIRE, USING THE LEVIN FORMULA EXACTLY THE
6 SAME WAY THE CDC DID TO COME UP WITH THE 420,000, EXCEPT I
7 DISTINGUISHED RISK FACTORS TO UNHEALTHY DIET.

8 I GET 758,000 WHAT ARE CALLED BY STATISTICIANS
9 ATTRIBUTABLE DEATHS. IT DOESN'T MEAN CAUSE. IT'S JUST

THE

10 RESULT OF THE LEVIN FORMULA.

11 IT MEANS EXTRA DEATHS IN THAT GROUP, AS I
12 EXPLAINED WITH THE LITTLE DOTS EARLIER.

13 Q. I TAKE IT YOU ALSO DID A SIMILAR CALCULATION
14 USING THE LEVIN FORMULA FOR LACK OF SOCIAL SUPPORT OR
15 STRESS?

16 A. YES.

17 Q. WHAT DID YOU FIND?

18 A. FOR LACK OF SOCIAL SUPPORT, WHICH IS A LARGE
19 RECOGNIZED RISK FACTOR, THERE WERE 824,000 WHAT ARE CALLED
20 ATTRIBUTABLE DEATHS. IT DOESN'T MEAN THEY'RE CAUSED.

IT'S

21 JUST THE RESULT OF THE LEVIN FORMULA, THE SAME WAY THE
22 420,000 IS A RESULT OF THE LEVIN FORMULA.
23 AND THEN I -- JUST TO SPEED ALONG HERE -- I DID
24 HIGH BLOOD PRESSURE AND OVERWEIGHT-UNDERWEIGHT, FOR
170,000,
25 161,000.
26 Q. I TAKE IT YOU ADDED UP THE RESULTS OF YOUR
LEVIN
27 FORMULA CALCULATIONS ON CPS-II?
28 A. YES.

4602

1 Q. AND YOU CAME UP WITH 2,480,000 ATTRIBUTABLE
2 DEATHS USING THAT -- USING THAT WORD AS YOU DEFINED IT FOR
3 US?
4 A. YES. AS IT'S DEFINED BY STATISTICIANS AND IN
THE
5 LITERATURE.
6 I ADDED UP THE ATTRIBUTABLE DEATHS AND GOT OVER
7 ABOUT TWO AND A HALF MILLION ATTRIBUTABLE DEATHS OUT OF
ONLY
8 1.1 MILLION ACTUAL DEATHS.
9 Q. AND BASED UPON THE ANALYSIS YOU DID OF
ADDITIONAL
10 LEVIN FORMULA CALCULATIONS ON CPS-II, DOES THAT AFFECT

YOUR

11 OPINION WITH RESPECT TO WHETHER OR NOT THE CPS-II DATA SET
12 SATISFIES THE CONDITION UNDER WHICH IT'S APPROPRIATE TO
USE
13 THE LEVIN FORMULA?

14 A. YES.

15 Q. AND WHAT IS YOUR OPINION?

16 A. MY OPINION IS THAT IT'S NOT APPROPRIATE TO USE
17 THE LEVIN FORMULA IN CONJUNCTION WITH THE CPS-II DATA
18 BECAUSE ANY ONE RISK FACTOR IS NOT ISOLATED.

19 SO WHEN YOU USE THE LEVIN FORMULA, YOU DON'T
JUST

20 GET THE EFFECT OF ONE THING. YOU GET KIND OF A BAG OF
21 DIFFERENT RISK FACTORS ALL TOGETHER.

22 SO LACK OF EXERCISE, 567,000 ATTRIBUTABLE
DEATHS,

23 DOESN'T MEAN THAT THE LACK OF EXERCISE ALONE CAUSED
567,000

24 DEATHS. IT DOESN'T MEAN THAT.

25 WHAT IT DOES MEAN IS PEOPLE WHO DON'T EXERCISE
26 HAVE A HIGHER DEATH RATE TO THIS AMOUNT.

27 Q. OKAY.

28 A. WHAT CAUSES IT IS NOT CLEAR, BUT IT'S CERTAINLY

4603

1 NOT THE ONE THING, LACK OF EXERCISE.

2 MR. FURR: WHY DON'T YOU HAVE A SEAT, PLEASE.
3 YOUR HONOR, I'M LOOKING FOR PLAINTIFFS' EXHIBIT
4 1804, WHICH WE USED EARLIER TODAY.
5 MR. BROWN: SORRY. I DIDN'T HEAR YOU.
6 MR. FURR: PLAINTIFFS' EXHIBIT 1804.
7 MR. BROWN: YOU WALKED THAT WAY WITH IT.
8 WHAT IS IT?

9 THE COURT: IS THAT THE DATA?
10 MR. BROWN: THE CDC CHART.
11 THE COURT: YES.
12 MR. FURR: YES. OKAY. THANKS.
13 COULD I HAVE THE LIGHTS, PLEASE.
14 THANKS, LUCY.
15 MS. CHABER: IT SHOULD BE NOTED THAT WE DID
NOT
16 TAKE IT.
17 THE COURT: OKAY. FOR THE RECORD, WHAT ARE
YOU
18 ABOUT TO SHOW?
19 MR. FURR: I'M ABOUT TO SHOW PLAINTIFFS'
EXHIBIT
20 1804.
21 THE COURT: OKAY.
22 MR. FURR: Q. DR. WECKER, I SHOWED YOU THIS

23 SLIDE EARLIER. DO YOU RECALL THAT?

24 A. YES.

25 Q. THIS 420,000 ANNUAL DEATHS FROM SMOKING THAT
26 APPEARS ON THIS CDC CHART, THAT'S A NUMBER THAT'S
CALCULATED

27 USING THE LEVIN FORMULA, ISN'T IT?

28 A. YES.

4604

1 Q. IF YOU WERE TO PUT ON THIS CHART THE
CALCULATIONS

2 THAT YOU MADE USING THE LEVIN FORMULA ON THE SAME DATABASE
3 FOR --

4 MR. BROWN: OBJECTION.

5 MR. FURR: Q. -- DIET AND LACK OF EXERCISE,
6 WHAT WOULD YOUR NUMBER BE?

7 MR. BROWN: OBJECTION, YOUR HONOR.

8 THE COURT: THAT CALLS FOR A MEDICAL OPINION.

9 MR. BROWN: ABSOLUTELY.

10 THE COURT: IT DOES. SUSTAINED.

11 MR. FURR: OKAY. LIGHTS.

12 THANK YOU, DR. WECKER. THAT'S ALL I HAVE, YOUR
13 HONOR.

14 THE COURT: OKAY. MR. BROWN.

15 I ASSUME NO OTHER DEFENSE COUNSEL HAVE ANY
16 QUESTIONS?

17 MR. HARDY: NO, YOUR HONOR.

18

19 CROSS-EXAMINATION

20 BY MR. BROWN: Q. WHEN STATISTICIANS TAKE
DATA

21 AND THEY PUT DOWN ASSOCIATIONS OF CERTAIN FACTORS WITH
22 CERTAIN CONDITIONS OR OTHER FACTORS, THEY ARE MERELY DOING
23 THAT FOR THE PURPOSE OF LETTING OTHER PROFESSIONALS DECIDE
24 WHAT IT MEANS, FOR EXAMPLE.

25 WOULD YOU AGREE WITH THAT?

26 A. NO. NO. I CAN EXPLAIN BRIEFLY, IF YOU LIKE,
WHY

27 I CAN'T AGREE WITH THAT.

28 Q. LET ME ASK ANOTHER QUESTION. LET ME GIVE YOU
AN

4605

1 EXAMPLE.

2 YOU HAVE A LARGE TRUCK THAT'S FILLED WITH
3 DIFFERENT KINDS OF CATTLE, DAIRY COWS, SOME SEMENTALS,

SOME
4 WHITE-FACED CATTLE. THERE'S ABOUT 100 OF THEM IN THIS
5 TRUCK.

6 THIS TRUCK GOES OVER THE CLIFF AND 70 OF THEM

ARE
7 KILLED, AND IT TURNS OUT TO BE ALL WHITE-FACED CATTLE.
THE
8 SEMENTHALS ARE THERE. THEY'RE HURT, BUT THEY'RE ALIVE.
THE
9 DAIRY CATTLE ARE ALIVE.
10 BUT WHAT A STATISTICIAN WOULD BE DOING, WHAT
YOU
11 HAVE BEEN DOING HERE IN COURT IS TELLING US THAT, IN THAT
12 TRUCK, THERE WAS THIS BUNCH OF CATTLE, AND STATISTICALLY,
OF
13 THE DEATHS, THEY ALL HAPPENED TO BE 100 PERCENT
WHITE-FACED
14 CATTLE, AND THEN YOU'D BREAK DOWN THE REST AS TO WHO WAS
15 ALIVE. THAT WOULD BE AN EXAMPLE OF WHAT YOU HAVE DONE
HERE,
16 ISN'T IT?
17 A. I DON'T SEE THIS CONNECTION. MAYBE WE COULD
18 STUDY WHAT CAUSED THE TRUCK TO GO OFF THE CLIFF. MAYBE
THEY
19 WERE RIDING IN THE FRONT AND THE TRUCK HIT THE FRONT END.
20 Q. THAT'S FAIR. YOU STARTED OFF STATISTICALLY TO
21 SAY, OF THE DEAD CATTLE, 70 OF THEM WERE WHITE-FACED?
22 A. THAT WOULD BE A FACT.
23 Q. A STATISTICAL FACT?
24 A. YES.

25 Q. IT WOULD BE AN ASSOCIATION -- WE WOULD KNOW
THEN
26 THAT OF THE DEAD CATTLE, 70 OF THOSE CATTLE THAT DIED --
IN
27 FACT, 100 PERCENT OF THE DEAD WERE THE WHITE-FACED CATTLE,
28 BUT IT WOULDN'T TELL US BY ITSELF WHY THEY DIED, WOULD IT?

4606

1 A. NO. THAT DOESN'T TELL YOU WHY THEY DIED UNTIL
2 YOU INVESTIGATE FURTHER.

3 Q. FOR THAT PUTTING INTO THE CONTEXT, AFTER WHAT
WE
4 HAVE BEEN DOING TODAY, YOU NEED A MEDICAL DOCTOR TO LOOK
5 AT -- OR A SCIENTIST TO LOOK IT AND DECIDE WHY DID THOSE
6 CATTLE DIE?

7 A. LIKE AN AUTOPSY?

8 Q. YES. THAT WOULD BE A GOOD WAY TO DO IT.

9 A. I AGREE WITH THAT.

10 Q. MAYBE FIVE OF THOSE CATTLE WERE ALREADY DEAD IN
11 THE TRUCK FROM SOME DISEASE. MAYBE THEY WERE KEPT AT TOO
12 HIGH AN ALTITUDE AND THEY DEVELOPED CONGESTIVE HEART
13 FAILURE. WHITE-FACED CATTLE DO THAT, YOU KNOW.

14 ARE YOU AWARE OF THAT?

15 A. I'M HAPPY TO ASSUME IT.

16 Q. ALL RIGHT. ENOUGH. LET ME GO ON TO SOME OTHER
17 QUESTIONS.
18 SOME SMART KID ONCE TOLD ME -- I THINK IT WAS
19 ONE
20 OF MINE -- THAT HE'D LEARNED IN COLLEGE THAT ASSOCIATION
21 OR
22 CORRELATION, I THINK HE USED, BUT ASSOCIATION --
23 CORRELATION
24 DOES NOT EQUAL CAUSATION. THAT'S WHAT HE TOLD ME.
25 WOULD YOU AGREE WITH THAT?
26 A. ABSOLUTELY. HE TOLD YOU THAT RIGHT.
27 Q. I TOLD YOU HE WAS A SMART KID. OKAY.
28 LET ME ASK YOU SOME QUESTIONS ABOUT WHAT YOUR
29 BACKGROUND HAS BEEN, AND WE CAN JUST GO THROUGH THIS
30 RAPIDLY, I THINK.
31 YOU'VE SAID SOME OF THIS ON DIRECT ALREADY. I

4607

1 WILL TRY TO SHORTCUT IT AND NOT TO MAKE IT TOO LONG HERE.
2 YOUR TRAINING, YOUR EXPERIENCE, YOUR EXPERTISE
3 DOES NOT FALL INTO MEDICAL SCIENCE. YOU ARE NOT A
4 QUALIFIED
5 EXPERT IN MEDICAL SCIENCE?
6 A. THAT'S TRUE, EXCEPT TO THE EXTENT THAT
7 STATISTICAL SCIENCE MAKES CONTRIBUTIONS TO MEDICAL
8 SCIENCE.

7 BUT I MAKE NO PRETENSE TO BE A MEDICAL DOCTOR.
8 Q. AND CONTRIBUTIONS TO MEDICAL SCIENCE COME FROM
A
9 LOT OF DIFFERENT PEOPLE.
10 BUT IN TERMS OF LOOKING AT THE POPULATION AND
11 DECIDING WHAT CAUSED THE DEATHS IN THAT POPULATION, THAT'S
12 WHAT EPIDEMIOLOGISTS DO; ISN'T THAT RIGHT?
13 A. IF THEY ARE DOING IT FULL TIME, THEY ARE
14 STATISTICIANS.
15 STATISTICIANS WHO WORK FULL TIME ON HUMAN
HEALTH
16 CALL THEMSELVES EPIDEMIOLOGISTS, YES.
17 Q. ON AN EPIDEMIOLOGICAL TEAM DOING AN
18 EPIDEMIOLOGICAL STUDY -- LET ME STOP RIGHT THERE.
19 HAVE YOU EVER BEEN ON ONE OF THESE TEAMS?
20 A. SURE. I HAVE STUDIED ISSUES OF HUMAN HEALTH --
21 Q. NO. NO.
22 A. -- WITH NTH.
23 Q. HAVE YOU EVER BEEN ON A TEAM THAT CONSISTS OF
24 EPIDEMIOLOGISTS WHO WERE IN CHARGE OF REACHING THE
RESULTS,
25 BUT THEY HAD STATISTICIANS THAT GAVE THEM HELP WHERE THEY
26 WANT STATISTICAL HELP?
27 A. I HAVE BEEN ON SUCH TEAMS, BUT I WAS THE
28 STATISTICIAN. EPIDEMIOLOGISTS ARE THE SAME GUY.

1 SO I HAVE BEEN ON SUCH TEAMS. YOU CAN CALL IT
2 THE STATISTICIAN OR THE EPIDEMIOLOGIST --

3 Q. YOU ARE NOT AN EPIDEMIOLOGIST?

4 MR. FURR: EXCUSE ME, YOUR HONOR.

5 I THINK THE WITNESS SHOULD BE ALLOWED TO FINISH
6 HIS ANSWER.

7 THE COURT: I AGREE.

8 HAVE YOU FINISHED YOUR ANSWER?

9 THE WITNESS: WE CAN START AGAIN.

10 MR. BROWN: Q. DO YOU HAVE A DEGREE IN
11 EPIDEMIOLOGY?

12 A. NO. I'M A STATISTICIAN.

13 Q. HAVE YOU EVER PUBLISHED IN A PEER-REVIEW
JOURNAL

14 AN EPIDEMIOLOGICAL STUDY RESULT?

15 A. WELL, I THINK SO. I RECALL MY STUDY ON
16 "CORRECTING FOR OMITTED-VARIABLES AND MEASUREMENT-ERROR
17 BIAS IN REGRESSION WITH AN APPLICATION TO THE EFFECT OF
LEAD

18 ON IQ."

19 LEAD IS AN ELEMENT THAT IS BAD FOR YOU, IF YOU
20 EAT TOO MUCH, AND THERE'S STATISTICAL DATA SUGGESTING IT
21 MIGHT ACTUALLY LOWER IQ IN CHILDREN WHO EAT TOO MUCH OF

IT,
22 LIKE FROM LEAD PAINT.
23 AND I DEVELOPED A METHODOLOGY FOR ASSESSING
THOSE
24 KINDS OF SITUATIONS.
25 MR. BROWN: Q. WHEN YOU HAVE CONFOUNDING
26 VARIABLES, THEN EPIDEMIOLOGISTS TRADITIONALLY AND
TYPICALLY
27 ADJUST FOR THOSE CONFOUNDING VARIABLES, DON'T THEY?
28 A. THEY WOULD, IF THEY COULD, BUT USUALLY CAN'T.
SO

4609

1 YOU DESIGN AN EXPERIMENT TO GET AROUND THAT PROBLEM.
2 Q. WHEN YOU HAVE, FOR EXAMPLE, SMOKERS WHO ARE
ALSO
3 INSULATION WORKERS, INSULATING WITH ASBESTOS --
4 A. YES.
5 Q. -- THEN YOU HAVE CONFOUNDING VARIABLES, DON'T
6 YOU?
7 YOU HAVE VERY HEAVY ASBESTOS EXPOSURE AND YOU
8 HAVE, IN SOME CASES, VERY HEAVY SMOKING HISTORIES;
CORRECT?
9 A. YES.
10 Q. THAT'S BEEN STUDIED, HASN'T IT?
11 A. YES.

12 Q. THAT WAS STUDIED BY ONE OF THE WORLD'S LEADING
13 EPIDEMIOLOGISTS AND SCIENTISTS IN THE FIELD OF ASBESTOS;
14 CORRECT?
15 A. IT'S BEEN STUDIED BY MANY PEOPLE. I DON'T KNOW
16 WHO YOU HAVE IN MIND.
17 Q. DOES DR. SELIKOFF RING ANY BELLS?
18 A. YES. I READ THAT.
19 Q. SELIKOFF DID A STUDY OVER MANY YEARS AND OVER
20 THOUSANDS OF INSULATORS?

21 A. I RECALL IT'S A LARGE SAMPLE.
22 Q. VERY LARGE.
23 AND HE ADJUSTED IN THAT STUDY FOR SMOKING, DID
HE
24 NOT?
25 A. YES, HE MADE SMOKING ADJUSTMENTS.
26 Q. AND HE CAME TO THE CONCLUSION, HE AND HIS TEAM
OF
27 EPIDEMIOLOGISTS -- HE'S AN EPIDEMIOLOGIST -- SCIENTISTS OF
28 ALL KINDS, HIS TEAM CAME TO A CONCLUSION THAT THEY HAD

4610
1 PROPERLY ADJUSTED OUT SMOKING FROM ASBESTOS EXPOSURE, AND
2 THEY APPLIED A RELATIVE RISK TO BOTH CAUSATIONS, DIDN'T
3 THEY?

4 MR. FURR: OBJECTION, YOUR HONOR. CALLS FOR
5 HEARSAY.
6 THE COURT: SUSTAINED.
7 MR. BROWN: THIS IS CROSS-EXAMINATION.
8 THE COURT: IT'S HEARSAY.
9 MR. BROWN: Q. DO YOU BELIEVE THAT THE
10 SELIKOFF STUDY OF INSULATORS, WHICH IS THE ONE WE HAVE
JUST
11 BEEN REFERRING TO, IS A RELIABLE AUTHORITY?
12 A. IT'S BEEN A LONG TIME SINCE I HAVE LOOKED AT
IT.
13 IF YOU HAD A COPY HERE AND WE HAD A BREAK, I
14 COULD GET YOU AN ANSWER TO THAT.
15 Q. LET ME ASK YOU THIS QUESTION.
16 A. I DON'T REMEMBER IT THAT WELL.
17 Q. DO YOU HAVE ANY QUESTION IN YOUR MIND THAT
18 DR. SELIKOFF AND HIS TEAM THAT LOOKED AT SMOKING AND
19 ASBESTOS EXPOSURE AND MADE CERTAIN CONCLUSIONS WERE NOT
20 RELIABLE AUTHORITIES?
21 MR. ROSSE: I OBJECT. BEYOND THE SCOPE OF
22 DIRECT.
23 THE COURT: WELL, I DON'T THINK IT'S BEYOND
THE
24 SCOPE OF DIRECT. BUT I DON'T THINK IT'S REALLY RELEVANT
25 WHETHER HE HAS ANY QUESTION IN HIS MIND ON THAT SUBJECT OR
26 NOT, BECAUSE THAT ISN'T THE LEGAL TEST THAT APPLIES HERE.

27 BUT IF THE OBJECTION IS JUST BEYOND THE SCOPE,
I
28 WOULD OVERRULE THAT. BUT I DON'T THINK THE ANSWER TO THIS

4611

1 QUESTION IS PERTINENT TO WHAT I UNDERSTAND TO BE THE
PURPOSE

2 OF THE QUESTION.

3 BUT YOU CAN GO AHEAD AND ASK IT, BECAUSE THERE
IS

4 NO OBJECTION ABOUT RELEVANCE YET.

5 SO YOU CAN GO AHEAD.

6 MR. BROWN: Q. YOU CAN ANSWER.

7 A. IT'S BEEN YEARS SINCE I HAVE READ THE SELIKOFF

8 ARTICLES. AND SO I'D LIKE TO TAKE A LOOK AT THEM. IF YOU

9 HAVE THEM WITH YOU, AND WE HAVE A BREAK, I COULD TELL YOU
IN

10 A FEW MINUTES IF I -- WHAT MY POSITION IS ON THEM.

11 Q. LET ME ASK YOU THIS: HAVE YOU EVER ARRIVED AT
12 THE OPINION THAT SOMETHING ABOUT THE WAY DR. SELIKOFF AND
13 HIS PEOPLE WORKED AND DEVELOPED THEIR INFORMATION AND THE
14 CONCLUSIONS THEY REACHED IN STUDYING THOSE INSULATORS AND
15 SMOKERS WITHIN THE INSULATORS WAS FLAWED?

16 A. IF YOU ACCEPT AN ANSWER THAT'S SORT OF A BEST

17 EFFORT, BASED ON A VAGUE RECOLLECTION, I CAN ANSWER, BUT I
18 HAVEN'T LOOKED AT THOSE PAPERS IN A LONG TIME.
19 IF YOU WILL UNDERSTAND THAT'S THE NATURE OF MY
20 ANSWER, I'LL TRY TO ANSWER IT.
21 THE COURT: WELL, THE LEGAL LINE HERE IS THAT
22 YOU'RE NOT PERMITTED TO GUESS. BUT IF YOU HAVE A
REASONABLE
23 RECOLLECTION, YOU CAN GIVE US YOUR RECOLLECTION.
24 THE QUESTION IS WHETHER YOU ARE GUESSING OR
25 WHETHER YOU'RE TESTIFYING FROM RECOLLECTION.
26 MR. BROWN: Q. WHAT I ASKED PROBABLY DOESN'T
27 CALL FOR A GUESS.
28 I ASKED FOR -- HAVE YOU EVER FORMED AN OPINION

4612

1 THAT THAT SELIKOFF STUDY ON THOSE INSULATORS WAS FLAWED?
2 MR. ROSSE: YOUR HONOR, I WOULD HAVE A
RELEVANCE
3 OBJECTION. I RENEW MY BEYOND THE SCOPE ALSO.
4 THE COURT: I'LL ALLOW HIM TO ANSWER.
5 THE WITNESS: IT'S BEEN A LONG TIME. I CAN
6 THINK OF ONE OPINION THAT I THINK I FORMED WHEN I LOOKED
AT
7 THAT MATERIAL A FEW YEARS AGO.
8 MR. BROWN: Q. AND YOU ARRIVED AT AN
OPINION,

9 DID YOU, THAT DR. SELIKOFF'S INSULATION -- INSULATOR STUDY
10 WAS A FLAWED STUDY?
11 A. I DIDN'T THINK OF IT IN QUITE THOSE STARK
TERMS,
12 BUT I THINK IT'S FAIR TO CALL IT FLAWED, YES.
13 Q. ARE YOU FAMILIAR WITH DR. DOLL'S STUDY OF
SMOKING
14 AS RELATED TO LUNG CANCER DONE IN THE EARLY 1950S?
15 A. YOU MEAN THE DOCTOR STUDY?
16 Q. I'M TALKING ABOUT SIR RICHARD DOLL.
17 A. HE'S DONE A LOT OF WORK. ON THE BRITISH
18 DOCTORS?
19 Q. THAT WOULD BE FINE.
20 A. MAYBE YOU SHOULD --
21 Q. NO. I SAID THAT WOULD BE FINE.
22 A. I DON'T KNOW WHAT YOU ARE TALKING ABOUT.
23 Q. THE BRITISH DOCTORS WOULD BE ALL RIGHT.
24 A. OKAY.
25 Q. ARE YOU FAMILIAR WITH THAT?
26 A. YES. YES.

27 Q. DO YOU THINK DR. DOLL'S STUDY OF THE BRITISH
28 DOCTORS, TRYING TO DETERMINE WHETHER LUNG CANCER -- EXCUSE

4613

1 ME -- WHETHER SMOKING WAS A MAJOR CAUSE OF LUNG CANCER IS
2 FLAWED IN SOME WAY?
3 MR. FURR: EXCUSE ME, YOUR HONOR. THIS IS NOT
4 AN OBJECTION, BUT I WANT TO PRESERVE THIS OPENING THE DOOR
5 TO THE TESTIMONY THAT I TRIED TO ELICIT.
6 THE COURT: HE DIDN'T TESTIFY ABOUT CAUSE, SO
7 HE'S SAYING YOU CAN ASK HIM THIS QUESTION, BUT IF YOU DO,
8 THEN HE RESERVES THE RIGHT TO ASK HIM ABOUT CAUSE.
9 SO YOUR QUESTION TO HIM --
10 MR. BROWN: I'M ASKING ABOUT DR. DOLL.
11 THE COURT: -- IT GOES BEYOND THE SCOPE OF
WHAT
12 HE TESTIFIED ABOUT, BECAUSE HE DID NOT PURPORT TO TESTIFY
13 ABOUT CAUSE.
14 MR. BROWN: ALL RIGHT.
15 THE COURT: BUT HE'S NOT MAKING THE OBJECTION.
16 HE'S JUST SAYING THAT IF YOU ASK HIM THAT QUESTION, THEN
HE
17 RESERVES THE RIGHT TO GO INTO CAUSE AS WELL.
18 BUT HE'S STAYED WAY FROM CAUSE OVER YOUR
19 OBJECTION. WITH YOUR OBJECTION, HE STAYED AWAY FROM IT.
20 AND I RULED IN YOUR FAVOR ON THAT.
21 MR. BROWN: MY OLD PARTNER FRANK FINNEY USED
TO
22 SAY "I'M FEARLESS, BUT THAT TERRORIZES ME."
23 THE COURT: OKAY.

24 MR. BROWN: OKAY.
25 Q. WAS DR. DOLL'S STUDY STATISTICALLY FLAWED?
26 A. YES. I COULD POINT OUT WEAKNESSES THAT ARE
27 FAIR -- I BELIEVE IT'S FAIR TO CALL A FLAW, YES.
28 Q. LET ME ASK YOU ABOUT SOME OTHER STUDIES.

4614
1 ARE YOU FAMILIAR WITH THE HAMMOND STUDY IN 1996
2 IN WHICH HE STUDIED THE AMERICAN CANCER SOCIETY CPS-I
DATA?
3 A. I DON'T REMEMBER A '96 HAMMOND STUDY. I RECALL
4 AN EARLIER HAMMOND STUDY.
5 ARE YOU SURE YOU HAVE THE DATE RIGHT?
6 Q. I THINK SO.
7 LET'S TALK ABOUT THE EARLIER STUDY.
8 YOU ARE FAMILIAR WITH THE HAMMOND STUDY THAT
9 LINKED SMOKING WITH LUNG CANCER?
10 A. IF BY "LINK" YOU MEAN ASSOCIATION, YES.
11 Q. WELL, I WON'T ARGUE WITH YOU ABOUT WHAT IT
12 FOUND.
13 BUT I WILL ASK YOU THIS: IN YOUR OPINION, WAS
14 THE HAMMOND STUDY -- ANY OF THE HAMMOND STUDIES YOU'RE

15 FAMILIAR WITH STATISTICALLY FLAWED?
16 MR. FURR: OBJECTION, YOUR HONOR. VAGUE,

UNLESS

17 HE IDENTIFIES THE STUDY.

18 THE COURT: SUSTAINED.

19 MR. BROWN: DID YOU SUSTAIN IT?

20 THE COURT: YES, BECAUSE I DON'T KNOW WHAT
STUDY

21 WE ARE TALKING ABOUT.

22 MR. BROWN: Q. ALL RIGHT. IF YOU ARE NOT

SURE

23 ABOUT THE STUDY, WE HAVE TO MOVE ON.

24 THE HAMMOND 1966 POPULATION STUDY, ACS CPS-I?

25 A. I KNOW THAT ONE. YOU SAID 1996.

26 Q. DID I?

27 A. YES. I SAID I DIDN'T KNOW THE 1996, BUT I KNOW

28 THE EARLIER ONE.

4615

1 Q. I DO THAT. I DO THAT FROM TIME TO TIME. I'M

2 SORRY. 1966.

3 WAS THAT STUDY STATISTICALLY FLAWED, IN YOUR

4 OPINION?

5 A. YES. AND IF YOU WANT, I'LL TRY TO EXPLAIN WHAT

6 SOME OF THE PROBLEMS WERE.

7 Q. I'LL JUST MOVE ON AND FIND OUT HOW MANY STUDIES

8 YOU THINK ARE FLAWED.

9 HOW ABOUT THE KAHN, K-A-H-N, STUDY, 1966, WHICH

10 STUDIED U.S. VETERANS; ARE YOU FAMILIAR WITH THAT STUDY?
11 A. I HAVE READ IT. IT'S BEEN A WHILE.
12 Q. DID YOU COME TO A CONCLUSION THAT STATISTICALLY
13 THAT WAS A FLAWED STUDY?
14 A. I DON'T HAVE A SHARP RECOLLECTION, BUT I HAVE
15 ENOUGH RECOLLECTION TO BELIEVE THAT IT WOULD HAVE SUFFERED
16 FROM THE SAME KIND OF CONFOUNDING PROBLEMS THAT I
DESCRIBED
17 HERE TODAY.
18 Q. OKAY. HOW ABOUT A STUDY BY THE CANADIAN
19 DEPARTMENT OF NATIONAL HEALTH AND WELFARE OF CANADIAN
MALES,
20 AND THAT TOOK PLACE IN 1966; ARE YOU FAMILIAR WITH THAT
21 STUDY?
22 A. THAT ONE DOESN'T RING A BELL.
23 Q. ALL RIGHT. HOW ABOUT AN AUTHOR NAMED CEDERLOF
24 AND OTHERS, A 1975 POPULATION STUDY OF MALES AND FEMALES
IN
25 TWO SUBGROUPS REGARDING SMOKING AND LUNG CANCER?
26 A. I DON'T RECOGNIZE IT FROM WHAT YOU SAY.
27 Q. DOLL AND PETO, 1976, P-E-T-O, BRITISH MALE
28 PHYSICIANS?

4616

1 A. THAT'S THE ONE I WAS TALKING ABOUT EARLIER.
2 Q. OKAY. I WAS REFERRING TO ONE IN THE '50S.

3 A. WE GOT MIXED UP.
4 Q. LET'S GO BACK THEN TO THE -- YOU THOUGHT YOU
WERE
5 TALKING ABOUT THE 1976 STUDY.
6 LET ME TAKE YOU BACK TO THAT ONE IN THE '50S
7 WHERE DOLL DID A STUDY ON THE LUNG CANCER BEING CAUSED BY
8 SMOKING.
9 DID YOU HAVE ANY -- EVER FORM AN OPINION THAT
10 THAT STUDY BY SIR RICHARD DOLL WAS FLAWED STATISTICALLY?
11 A. I REMEMBER -- I DON'T REMEMBER SPECIFICALLY,
12 BECAUSE IT'S BEEN A LONG TIME SINCE I HAVE READ THAT.
13 BUT MY MEMORY IS SHARP ENOUGH TO SAY THAT THERE
14 WERE A LOT OF PEOPLE WHO POINTED OUT CONCERNS ON THOSE
EARLY
15 1950 STUDIES, SERIOUS PROBLEMS.
16 Q. LET'S MOVE UP TO DOLL AND PETO, 1976, BRITISH
17 MALE PHYSICIANS.
18 DID YOU HAVE -- ARE YOU FAMILIAR WITH THAT ONE?
19 I THINK YOU SAID YOU WERE.
20 A. YES. IN FACT, WE DISCUSSED THAT ONE.
21 Q. IS THAT ONE YOU THOUGHT WAS FLAWED
STATISTICALLY?
22 A. IT SUFFERS FROM SOME OF THE SAME PROBLEMS I
23 DISCUSSED HERE TODAY, YES.

24 Q. ALL RIGHT. DOLL AND SOME OTHERS DID A STUDY IN
25 1980 ON BRITISH FEMALE PHYSICIANS.
26 ARE YOU FAMILIAR WITH THAT ONE?
27 A. WHAT YEAR?
28 Q. 1980.

4617
1 A. I THINK I'VE SEEN THAT.
2 Q. HAVE YOU FORMED AN OPINION AS TO WHETHER THAT
3 STUDY WAS STATISTICALLY FLAWED?
4 A. I DON'T REMEMBER THAT ONE WELL ENOUGH.
5 Q. ALL RIGHT.
6 A. BUT IF CAUSE WAS A CONCLUSION, THEN I WOULD
POINT
7 OUT A FLAW. IF ASSOCIATION WAS THE CONCLUSION, THEN IT
MAY
8 BY OKAY.
9 Q. I'M SORRY?
10 A. THE FLAW IS NOT THE STUDY. IT'S WHAT YOU
11 CONCLUDE, PERHAPS ERRONEOUSLY, FROM THE STUDY.
12 IF THE CONCLUSION WAS THERE WAS AN ASSOCIATION
13 OF, SAY, SMOKING WITH HIGHER MORTALITY, THAT'S JUST A
FACT.
14 I OBSERVED IT MYSELF.
15 BUT THE FLAW COMES IN WHEN YOU GET AN
16 OVERREACHING INTERPRETATION OR CONCLUSION IN THE ARTICLE

17 THAT EITHER TRIES TO CLAIM ITS CAUSE OR TRIES TO SAY THAT
18 THE EXCESS OF DEATHS IS ONE THING ONLY AND NOT A
19 COMBINATION.

20 Q. ARE YOU SAYING THAT IF A STUDY IS STATISTICALLY

21 FLAWED, THEN THE CONCLUSIONS THAT THE AUTHORS OR
CONDUCTORS

22 OF THE STUDIES MAKE WITH REGARD TO FINDING CAUSATION IS
ALSO

23 FLAWED?

24 A. ANY --

25 MR. FURR: NO OBJECTION TO THE QUESTION, BUT I
26 WANT TO BE CLEAR AS TO THE DOOR BEING OPENED BY THIS
27 QUESTION.

28 MR. BROWN: THAT'S NOT TRUE.

4618

1 I'M TALKING --

2 THE COURT: I'M NOT GOING TO RULE WHETHER IT'S
3 TRUE OR NOT. I'M GOING TO LET YOU ASK THE QUESTION. I

WILL

4 DETERMINE WHETHER IT OPENS THE DOOR OR NOT LATER.

5 HE'S JUST TELLING YOU HE'S GOING TO MAKE THAT
6 CLAIM. I DON'T HAVE AN OCCASION TO MAKE ANY RULINGS RIGHT
7 NOW, BECAUSE THERE IS NO OBJECTION.

8 SO YOU GO AHEAD, IF YOU WISH TO.
9 MR. BROWN: LET ME ASK THIS QUESTION. I WILL
10 WITHDRAW THE OTHER ONE.
11 Q. YOU'RE NOT QUALIFIED TO GIVE US CAUSATION ON
ANY
12 ASPECT WHATSOEVER OF LUNG CANCER, ARE YOU?
13 A. EXCEPT ONE ASPECT THAT I'D BE GLAD TO CLARIFY
14 WITH YOU, IF YOU LIKE.
15 Q. HAVEN'T YOU TESTIFIED TODAY IN THIS COURT THAT
16 WHEN YOU CAME IN HERE, YOU DIDN'T INTEND TO TESTIFY AS TO
17 CAUSATION?
18 A. WHAT I HOPE I SAID WAS THIS: THAT I HAD NO
19 OPINION AS TO WHETHER ANY RISK FACTOR CAUSED ANY DISEASE
OR
20 DEATH. THAT WAS TRUE THEN AND IS TRUE NOW.
21 BUT AS A STATISTICIAN, I KNOW WHETHER IT'S
PROPER
22 TO REACH CAUSAL CONCLUSIONS. I KNOW THE SAME THING YOUR
SON
23 KNOWS, THAT CORRELATION IS NOT CAUSATION. I KNOW THAT.
24 Q. ALL RIGHT. LET ME GO BACK TO THESE STUDIES.
25 HOW ABOUT --
26 THE COURT: IN FIVE, TEN MINUTES, JUDITH IS
27 GOING TO NEED A RECESS.
28 MR. BROWN: WE COULD STOP RIGHT HERE.

4619

1 THE COURT: YOU WANT TO STOP RIGHT HERE?
2 MR. BROWN: THIS IS FINE.
3 THE COURT: THIS HAS BEEN A RATHER LONG
4 SEGMENT. LET'S GO FOR A LITTLE OVER 20 MINUTES, TO
QUARTER

5 TO 4:00.

6 PLEASE CONTINUE TO FOLLOW THE ADMONITION.

WE'LL

7 SEE YOU BACK AT QUARTER TO 4:00.

8 (RECESS TAKEN FROM 3:20 TO 3:48 P.M.)

9 THE COURT: I THINK EVERYBODY IS HERE, AND WE
10 ARE READY TO GO, MR. BROWN.

11 MR. BROWN: I'M JUST ABOUT THROUGH.

12 Q. PRELIMINARY TO MY QUESTION, I JUST WOULD ASK
YOU

13 THIS: YOU HAVE CRITICIZED HERE, IN DIRECT AND ON
14 CROSS-EXAMINATION, THE CPS-II, THE CDC, THE DOLL STUDIES,
15 SELIKOFF AND SOME OTHERS.

16 AND WHAT I'D LIKE TO ASK YOU IS THIS: HAVE YOU
17 EVER PUBLISHED YOUR CALCULATIONS UPON WHICH YOUR
CRITICISMS

18 ARE BASED IN ANY SCIENTIFIC JOURNALS IN WHICH YOU WERE
19 SUBJECTED TO PEER REVIEW, OR HAVE YOU JUST PRESENTED THIS

20 THEORY OF YOURS IN COURTROOMS LIKE THIS ONE?
21 A. THE BASIC IDEA OF CONFOUNDING IS TO BE FOUND IN
22 NUMEROUS ARTICLES OF MINE.
23 IF YOUR QUESTION IS FOCUSED ON A PARTICULAR
24 EXHIBIT THAT I HAD HERE TODAY, THAT HAS NOT EVER BEEN
25 SUBMITTED TO A JURY, BECAUSE IT'S NOT APPROPRIATE STUFF
FOR
26 A JURY.
27 I'M AN EDITOR, I KNOW THAT, BUT I HAVE
SUBMITTED
28 IT TO LAWYERS, WHO HAVE THE OPPORTUNITY TO REVIEW IT AND

4620
1 TELL ME IF THEY THINK IT'S WRONG.
2 Q. YOU KNOW WHAT A PEER-REVIEW ARTICLE IS, DON'T
3 YOU, DOCTOR?
4 A. SURE.
5 Q. YOU KNOW THAT WHEN YOU WRITE AN ARTICLE FOR A
6 PEER-REVIEW JOURNAL, THAT SOME VERY CAPABLE PEOPLE LOOK AT
7 IT TO DETERMINE WHETHER THE PROPOSED ARTICLE HAS MERIT?
YOU
8 KNOW THAT?
9 A. YES.
10 Q. NOW, THE QUESTION IS: HAVE YOU EVER SUBMITTED
11 FOR PUBLICATION TO A PEER-REVIEW JOURNAL AN ARTICLE OR A
12 PAPER WHICH CRITICIZES ANY OR ALL OF THESE STUDIES THAT I

13 HAVE MENTIONED AND YOU'VE TESTIFIED ABOUT IN WHICH YOU
14 LAID OUT YOUR CALCULATIONS AND WHY THESE STUDIES WERE FLAWED?
15 A. I'M THINKING, SO I CAN BE RESPONSIVE. I KNOW
16 THAT'S MY OBLIGATION HERE, BUT THE QUESTION HAS NOT A LOT
17 OF PIECES TO IT.
18 I HAVE LAID OUT IN A PUBLICATION THE PRINCIPLES
19 THAT I HAVE DISCUSSED TODAY, BUT I HAVE NOT PUT IN A
20 PUBLICATION THE PARTICULAR NUMBERS THAT ILLUSTRATE THE
21 PRINCIPLES THAT WE HAVE USED TODAY.
22 AND IF I GOT -- IF I GOT THOSE AS AN EDITOR, I
23 WOULDN'T PUBLISH THEM, BECAUSE THAT'S NOT THE STUFF OF A
24 SCIENTIFIC ARTICLE.
25 Q. WOULD YOU CONCEDE THAT THE SOURCES OF
26 INFORMATION THAT YOU HAVE CRITICIZED HERE ARE VERY IMPORTANT IN THE

27 LITERATURE, FROM A STANDPOINT OF STATISTICS AND OTHERWISE?
28 A. YES, THEY'RE IMPORTANT, AND THEY'RE ACTUALLY
WELL

4621 UNDERSTOOD.
1
2 THAT'S WHY THEY WOULDN'T GET PUBLISHED.

THEY'RE

3 PRETTY WELL UNDERSTOOD.

4 Q. RECOGNIZING IN THEORY -- IS IT YOUR TESTIMONY
5 THAT YOU HAVE NEVER PREPARED A PAPER WHICH PRESENTS THE
SAME
6 CRITICISM YOU PROVIDED HERE TO A PEER-REVIEW PROCESS FOR
7 PUBLICATION AND THEN GOT PUBLISHED IN A PEER-REVIEW
JOURNAL?

8 A. THAT'S RIGHT. I HAVEN'T DONE THAT.

9 I PRESENTED THIS AS COURTROOM MATERIAL, AND I
10 PRESENTED IT TO YOU AND YOUR EXPERTS TO TAKE A LOOK AT,
BUT
11 NOT A PEER-REVIEW JOURNAL.

12 MR. BROWN: DOCTOR, THANK YOU.

13 THE WITNESS: THANK YOU.

14 THE COURT: ANYTHING FURTHER?

15 MR. FURR: YES, YOUR HONOR.

16

17 REDIRECT EXAMINATION

18 BY MR. FURR: Q. DR. WECKER, I'M NOT GOING
TO

19 ASK YOU TO HELP ME SOLVE THE MYSTERY OF THE DEATH OF THE
20 COWS OVER THE CLIFF, BUT I DO WANT TO ASK YOU ANOTHER
21 QUESTION ABOUT PLAINTIFFS' EXHIBIT 1804.

22 THIS NUMBER FOR SMOKING ATTRIBUTABLE MORTALITY,
23 THAT'S A NUMBER THAT WAS CALCULATED USING THE LEVIN

FORMULA?

24 A. YES.

25 Q. IS THAT A NUMBER THAT IS BASED UPON AN AUTOPSY
26 INVESTIGATION OF THE INDIVIDUALS INVOLVED IN THE STUDY?

27 MR. BROWN: THIS GOES BEYOND THE SCOPE, YOUR
28 HONOR. I OBJECT TO THAT.

4622

1 HE COVERED THIS ON DIRECT. I DIDN'T COVER IT

AT

2 ALL.

3 THE COURT: I THOUGHT THERE WAS AN OBJECTION
4 THAT WE DIDN'T GET INTO IT.

5 MR. FURR: NO, YOUR HONOR.

6 THE COURT: IS THAT A DIFFERENT ONE?

7 MR. FURR: THIS IS THE LAST QUESTION.

8 THE COURT: I THOUGHT YOU OBJECTED TO IT.

9 MR. FURR: NO.

10 MR. BROWN: I OBJECTED TO THAT SHOWING
11 CAUSATION, AND THAT WAS THE END OF IT. NEVER ASKED.

12 THE COURT: I THINK MR. BROWN HAD OBJECTED TO
13 THE LAST QUESTION YOU WERE GOING TO ASK HIM ABOUT THIS,

AND

14 I SUSTAINED THAT. RIGHT?

15 MR. FURR: NO, YOUR HONOR. I DON'T WANT TO
16 ARGUE IN FRONT OF JURY.
17 THIS IS MY LAST QUESTION. I CAN EXPLAIN IT
VERY
18 QUICKLY.
19 THE COURT: GO AHEAD. ASK IT AGAIN.
20 MR. BROWN: THE LAST QUESTION EXCEPTION.
21 THE COURT: IT'S GOING TO BE VERY EFFECTIVE.
22 MR. FURR: I HAVE LEARNED THE LAST QUESTION
23 EXCEPTION WHILE I HAVE BEEN IN CALIFORNIA.
24 THE COURT: YOU CAN ASK IT AGAIN. SEE IF
THERE
25 IS AN OBJECTION.
26 MR. FURR: Q. WAS THIS NUMBER BASED UPON AN
27 INVESTIGATION OF AUTOPSY REPORTS?
28 A. NO.

4623

1 MR. BROWN: OBJECTION.
2 THE WITNESS: NO.
3 MR. BROWN: FOUNDATION, AND BEYOND THE SCOPE
OF
4 THE CROSS-EXAMINATION.
5 THE COURT: BEYOND THE SCOPE. GIVEN THIS ONE
6 QUESTION, I'M GOING TO OVERRULE THAT. HE'S SAYING IT
LACKS

7 FOUNDATION.
8 I'LL LEAVE THE ANSWER IN. BUT ASK HIM HOW HE
9 KNOWS, AND THEN I'LL EITHER LEAVE IT IN OR NOT, DEPENDING
ON
10 WHAT HIS ANSWER IS.
11 MR. FURR: Q. DR. WECKER, HOW DO YOU KNOW
THIS
12 NUMBER WAS NOT BASED ON AUTOPSY REPORTS?
13 A. BECAUSE I KNOW IT'S BASED ON -- ONLY ON THE
LEVIN
14 FORMULA, BECAUSE I READ THE ARTICLE I'M HOLDING IN MY HAND
15 (INDICATING). THAT MADE IT CLEAR.
16 Q. COULD YOU JUST READ THE TITLE OF THE ARTICLE.
17 A. "CDC MORTALITY MORBIDITY, WEEKLY REPORT, AUGUST
18 17, 1993."
19 MR. FURR: OKAY.
20 MR. BROWN: OBJECTION. HEARSAY.
21 THE COURT: SUSTAINED.
22 MR. FURR: THANKS VERY MUCH.
23 THE COURT: THAT'S HEARSAY. I'M GOING TO
STRIKE
24 THE ANSWERS TO THE LAST TWO QUESTIONS. IT'S BASED ON
25 HEARSAY.
26 MR. FURR: THANK VERY MUCH, DOCTOR.
27 THE WITNESS: THANKS.
28 MR. BROWN: NO QUESTIONS.

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1 THE COURT: OKAY. MAY THE DOCTOR BE EXCUSED?
2 MR. BROWN: YES, HE CAN.

3 THE COURT: YES.
4 MR. FURR: YES, YOUR HONOR.
5 THE COURT: YOU ARE EXCUSED.
6 (WITNESS EXCUSED)
7 MR. HARDY: YOUR HONOR, I THINK, NEXT, WE'LL
8 READ FROM THE DEPOSITION OF DR. KIN JUNG.
9 THE COURT: WHY DON'T YOU GIVE THE NAME AND
DATE
10 OF THE DEPOSITION. SPELL THE NAME, PLEASE.
11 MR. HARDY: IT'S THE DEPOSITION OF KIN, K-I-N.
12 THE COURT: K-I-N?
13 MR. HARDY: YES. JUNG, J-U-N-G, M.D., FRIDAY
14 DECEMBER 3, 1999.
15 AND IT'S DEFENDANTS' EXHIBIT 4850.
16 (DOCUMENT MORE PARTICULARLY
17 LISTED IN THE INDEX MARKED
18 FOR IDENTIFICATION DEFENDANTS'
19 EXHIBIT # 4850)
20 MR. HARDY: I UNDERSTAND THE COURT'S PROCEDURE
21 IS JUDITH DOES NOT TAKE THIS DOWN. WE GIVE A COPY OF WHAT

22 IS BEING READ TO TATSUO. AND THAT'S WHAT I'M DOING.
23 THE COURT: IS THERE A COPY FOR THE COURT
THAT'S
24 MARKED FOR IDENTIFICATION?
25 MR. HARDY: THERE IS A COPY HERE FOR THE
COURT.
26 THE COURT: THANK YOU. AN EXTRA COPY.
27 SO 4850 IS THE TRANSCRIPT OF WHAT'S BEING READ?
28 MR. HARDY: YES, YOUR HONOR.

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1 THE COURT: OKAY. AND WE HAVE THE SAME
2 STIPULATION, MS. CHABER, ABOUT THE READING OF THIS?
3 MS. CHABER: YES.
4 THE COURT: SO I THINK --
5 MR. HARDY: WITH THE COURT'S PERMISSION, DAVID
6 STOMP WILL COME UP AND PLAY THE ROLE OF DR. JUNG.
7 THE COURT: OKAY.
8 I THINK WE ARE READY TO GO OFF THE RECORD FOR
THE
9 PURPOSE OF THE READING.
10 MR. HARDY: YES, YOUR HONOR.
11 (DEPOSITION READ)
12 THE COURT: BACK ON THE RECORD. WE COMPLETED
13 THE READING OF DR. JUNG'S DEPOSITION.
14 WHAT'S NEXT?

15 MR. HARDY: I BELIEVE WE ARE GOING TO SHOW A
16 TAPE OF THE REBECCA ENLOW DEPOSITION.
17 THE COURT: CAN YOU GIVE US THE SPELLING OF
THE
18 NAME AND THE DATE OF THE DEPOSITION, PLEASE.
19 MR. ESCHER: YES. IT'S REBECCA,
R-E-B-E-C-C-A,
20 L. ENLOW, E-N-L-O-W.

21 IT WAS TAKEN OCTOBER 19TH, 1999.
22 THE COURT: OKAY. AND THIS IS A VIDEO OF THE
23 DEPOSITION YOU ARE GOING TO PLAY?
24 MR. ESCHER: THAT'S RIGHT, YOUR HONOR.
25 THIS IS ONE THAT HAS THE TWO ERRATA THAT WE'LL
26 HAVE TO READ WHEN WE GET TO THOSE POINTS.
27 THE COURT: WE'LL KEEP JUDITH AVAILABLE.
28 MR. ESCHER: DID YOU WANT A COPY OF IT TO READ

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1 ALONG?
2 THE COURT: ARE WE GOING TO MARK FOR
3 IDENTIFICATION BOTH THE TRANSCRIPT AND THE VIDEOTAPE?
4 MR. ESCHER: YES. I THINK SO, YOUR HONOR.
5 THE COURT: OKAY. WHY DON'T WE DO THAT.
6 MR. ESCHER: WE'VE MARKED AS 4851 THE

DEPOSITION

7 TRANSCRIPT OF REBECCA ENLOW.
8 (DOCUMENT MORE PARTICULARLY
9 LISTED IN THE INDEX MARKED
10 FOR IDENTIFICATION DEFENDANTS'
11 EXHIBIT # 4851)

12 THE COURT: AND THAT SHOWS THE PORTIONS THAT
ARE

13 GOING TO BE PLAYED?

14 MR. ESCHER: YES, YOUR HONOR.
15 AND THE VIDEOTAPE ITSELF HAS BEEN MARKED AS
16 4851-A.

17 (ITM MORE PARTICULARLY
18 LISTED IN THE INDEX MARKED
19 FOR IDENTIFICATION DEFENDANTS'
20 EXHIBIT # 4851-A)

21 THE COURT: PURSUANT TO THE STIPULATION, WE
ARE

22 ABOUT TO GO OFF THE RECORD FOR THE PLAYING OF THE VIDEO,
23 WITH THE UNDERSTANDING THAT THE TRANSCRIPT, WHICH IS 4851
24 FOR IDENTIFICATION, WILL TELL US WHAT WAS BEING PLAYED ON
25 THE VIDEO.

26 WE CAN GO OFF THE RECORD.
27 (VIDEOTAPE SHOWN)

28 THE COURT: WE ARE ON THE RECORD. WE

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1 INTERRUPTED THE VIDEO.
2 MR. ESCHER WANTS TO SAY SOMETHING.
3 MR. ESCHER: YES, YOUR HONOR. I TRIED TO STOP
4 IT IN TIME, RIGHT AFTER THE QUESTION: "OR COULD BE TERMED
5 ADDICTIVE, CORRECT?"
6 THE VIDEOTAPE WENT INTO THE ANSWER TO THE
7 FOLLOWING QUESTION, AND IT SHOULDN'T HAVE, AND IT WAS
8 DELETED, BECAUSE THERE'S AN ERRATA TO THE ANSWER THAT'S IN

9 THE DEPOSITION TRANSCRIPT ITSELF WITH RESPECT TO THE
10 QUESTION OF: "COULD CREATE A STRONG DEPENDENCE OR COULD
BE
11 TERMED ADDICTIVE, CORRECT?"
12 THE ERRATA, AND THE ANSWER IS: "YES I THINK
DID
13 UNDERSTAND THAT."
14 THE COURT: OKAY. WE CAN GO OFF THE RECORD
AND
15 CONTINUE PLAYING THE VIDEO.
16 (VIDEOTAPE SHOWN)
17 MR. ESCHER: I HAVE TO READ FROM THE ERRATA
18 AGAIN, YOUR HONOR.
19 THE COURT: OKAY.
20 MR. ESCHER: THE ANSWER IS: "17 YEARS AGO, WE

21 DISCUSSED QUITTING SMOKING BECAUSE IT WAS/IS
22 SUPPOSED TO BE DANGEROUS TO YOUR HEALTH AND MY
23 UNBORN BABY. I REMEMBERED THAT AFTER I REREAD
24 THE QUESTION IN THE DEPOSITION BOOKLET AND MR.
25 BARRON'S LAST REMARKS ON PAGE 116, LINE NO. 4."
26 THAT'S IT.
27 THE COURT: DOES IT SAY PAGE 160?
28 MR. ESCHER: PAGE 116, LINE NO. 4.

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1 THAT'S IT FOR THE ERRATA, YOUR HONOR.
2 MS. CHABER: BUT YOU'RE PLAYING THE ANSWER?
3 MR. ESCHER: I DON'T BELIEVE SO. I NEED TO
4 DOUBLE-CHECK.
5 IT WASN'T INDICATED TO BE PLAYED ON THE
6 TRANSCRIPT.
7 MS. CHABER: YES. IT WAS SUPPOSED TO BE
PLAYED
8 AND THEN THE ERRATA WAS SUPPOSED TO BE DISCUSSED.
9 THE COURT: THE PROPER WAY TO DO THIS IS TO
READ
10 THE ORIGINAL ANSWER AND THEN TO READ THE CHANGE.
11 MR. ESCHER: I'M HAPPY TO DO THAT NOW, YOUR
12 HONOR.
13 THE COURT: WE'LL READ THE QUESTION ON THE
14 RECORD.

15 YOU GO AHEAD AND DO IT.
16 MS. CHABER: I WILL DO THE READING ON THIS
PART
17 BECAUSE IT'S MY QUESTION.
18 THE COURT: LET'S JUST BE CLEAR ABOUT WHAT THE
19 ORIGINAL ANSWER WAS AND --
20 MS. CHABER: THAT'S WHAT --
21 THE COURT: LET ME FINISH, COUNSEL, PLEASE.
22 LET'S JUST BE CLEAR ON THE RECORD WHAT THE
23 ORIGINAL ANSWER WAS AND WHAT THE CHANGE WAS.
24 SO MS. CHABER, YOU ARE GOING TO READ THE
ORIGINAL
25 ANSWER?
26 MS. CHABER: YES.

27 THE COURT: OKAY.
28 MS. CHABER: "QUESTION: HAS LESLIE EVER
TALKED

4629
1 TO YOU ABOUT WHETHER OR NOT SHE BELIEVES SHE'S
2 ADDICTED TO CIGARETTE SMOKING?
3 "ANSWER: YES.
4 "QUESTION: WHAT WAS THE CONVERSATION THAT
5 YOU'VE HAD ABOUT THAT?

6 "ANSWER: WE DISCUSSED IT BECAUSE WE HAD BOTH
7 DISCUSSED QUITTING. AND WE ATTEMPTED IT, OR I
8 HAD. PRETENDED TO. IT'S DIFFICULT.
9 "WHAT SHE SAID WAS SHE THOUGHT IT WAS -- SHE
HAD
10 HEARD THAT IT WAS HARDER TO QUIT SMOKING THAN
TO
11 QUIT USING DRUGS THAT YOU-- LIKE HEROIN, THAT
YOU
12 GET ADDICTED TO. SHE HAD READ IT IN A
MAGAZINE,
13 I THINK."
14 AND THEN THERE IS THE ERRATA.
15 THE COURT: NOW, DO YOU WANT TO READ THE
CORRECT
16 ONE?
17 MR. ESCHER: YES, I WILL READ THE CORRECTED
18 ANSWER, YOUR HONOR, WHICH IS AS FOLLOWS:
19 "17 YEARS AGO, WE DISCUSSED QUITTING SMOKING
20 BECAUSE IT WAS/IS SUPPOSED TO DANGEROUS TO YOUR
21 HEALTH AND MY UNBORN BABY. I REMEMBERED THAT
22 AFTER I REREAD THE QUESTION IN THE DEPOSITION
23 BOOKLET AND MR. BARRON'S LAST REMARKS ON PAGE
24 116, LINE NO. 4."
25 THE COURT: OKAY. SHALL WE RETURN TO THE
26 VIDEO?

27 MR. ESCHER: YES.
28 THE COURT: OKAY. OFF THE RECORD.

4630
1 (VIDEOTAPE SHOWN)
2 THE COURT: BACK ON THE RECORD.
3 THAT COMPLETES THE READING OF THE DEPOSITION --
4 OR EXCUSE ME -- THE PLAYING OF THE VIDEOTAPE DEPOSITION OF
5 MS. ENLOW.
6 MR. HARDY: I THINK THAT'S ALL WE HAVE FOR
7 TODAY.
8 THE COURT: OKAY. IF YOU WANT TO TALK WITH
EACH
9 OTHER, YOU CAN COME UP WITH THE ANSWER AS TO WHAT TIME YOU
10 WANT TO START TOMORROW AND TO HAVE THE JURY. WHATEVER
TIME
11 YOU PICK, WE'LL START.
12 DO YOU WANT TO TALK TO EACH OTHER ABOUT IT?
13 (ATTORNEYS CONFER)
14 THE COURT: IN THE MEANWHILE, JURORS, OVER THE

15 EVENING, PLEASE CONTINUE TO FOLLOW THE ADMONITION. YOU
KNOW
16 IT'S ABSOLUTELY CRITICAL THAT YOU DO SO.
17 MR. HARDY: 9:00 O'CLOCK.

18 OKAY, JURORS. WE ARE GOING TO START TOMORROW
AT
19 9:00 O'CLOCK.
20 HAVE A GOOD EVENING. WE'LL SEE YOU TOMORROW AT
21 9:00 O'CLOCK.
22 (THE PROCEEDINGS ADJOURNED AT 4:50 P.M.)
23
24
25
26
27
28

Testimony: Martin Wecker Jung Enlow
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